



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA**MISC. CIVIL APPLICATION NO.139 OF 2024
IN
WRIT PETITION NO.362 OF 2012**

MULLA A. MUZAWAR AND 4 ORS.PETITIONER
VERSUS
SUDRUDDIN ROYAL THROUGH
HIS CONSTITUTED ATTORNEY
PRAVEEN NIZAR LALANI
AND 12 ORS.RESPONDENTS

Mr. Terence B. Sequeira, Advocate for the Petitioner

CORAM: BHARAT P. DESHPANDE, J.

DATED: 28th June, 2024

ORAL ORDER

1. Heard Mr Sequeira appearing for the Applicant. Even though respondents were served by way of publication, none appeared.
2. An application is filed with the following prayer:

(i) For an order/direction directing the Registry of this Hon'ble High Court to issue Cheque/Demand Draft in the name of Mr. Mulla Ahmed Muzawar (Petitioner No. 4) for the amount deposited as directed in Order dated 17.01.2013 in this Hon'ble Court along with interest accrued thereon,

Or in the alternative,

For an order/direction directing the registry to transfer the amount deposited in this Hon'ble Court in terms of Order dated 17.10.2013 in W.P. No 362/2012 along with interest accrued thereon, and a consequential direction to the Hon'ble Trial Court's registry to issue Cheque/Demand Draft in the name of Mr. Mulla Ahmed Muzawar (Petitioner No. 4) for the amount so transferred;

ii) For an Order/direction directing the Hon'ble Trial Court's registry to issue Cheque/Demand Draft in the name of Mr. Mulla Ahmed Muzawar (Petitioner No. 4) for the amount deposited as directed in Order dated 03.02.2023 in this Hon'ble Court along with interest accrued thereon;

3. The Writ Petition No.362/2012 was filed before this court wherein an order was passed on 17.01.2013, which reads thus:

"Heard Shri S.D. Lotlikar, learned Senior Counsel appearing for the petitioners and Shri J. Godinho, learned Counsel appearing for respondent no.1.

2. Rule. Hearing expedited. Shri J. Godinho, learned Counsel waives service on behalf of the respondent no.1.

3. Shri S.D. Lotlikar, learned Senior Counsel prays for interim reliefs and for stay of the

impugned judgments passed by the Courts below.

4. Shri J. Godinho, learned Counsel appearing for respondent no.1 strongly opposes any interim reliefs.

5. The reliefs granted by the Courts below, include a mandatory as well as a temporary injunction against the petitioners. There is a dispute with regard to the claim of the respondents to three garages which the petitioners claim to be part of their shops.

6. Considering the dispute raised by the petitioners, I find it appropriate that the operation of the impugned judgments dated 13/04/2009 and 7/03/2012 passed by the Courts below are stayed subject to the petitioners depositing in this Court a sum of Rs.15,000/- per month from January, 2013 up to the disposal of the above petition. The amount shall be deposited in advance every three months. The first amount of Rs.45,000/- for the months of January, 2013 to March, 2013 to be deposited by the petitioners within four weeks from today and the subsequent amount shall be deposited in advance for every three months until disposal of the above petition. Registry is directed to invest the said amount in Fixed Deposit of any Nationalized Bank initially for a period of one year and the same shall be renewed from time to time until disposal of the Writ Petition. The

amount deposited shall be subject to the final order passed in the Writ petition.”

4. Subsequently wide order dated 3.02.2023, the said petition was disposed of with the following order:

1. *Heard the learned Counsel for the parties. With their consent, this matter is taken up for disposal.*
2. *Respondent No.1 is the original Plaintiff in Special Civil Suit No.31/2007/A. The Plaintiff complained of forcible dispossession and applied for temporary mandatory injunction to restore the possession of the suit shop. The Trial Court and the Appeal Court, granted temporary mandatory injunction as prayed for. However, such orders were stayed by this Court subject to the Petitioners' depositing ₹15,000/- each month. This interim order operates till date.*
3. *The leaned Counsel for the parties point out that for some reasons, the evidence has not commenced in the suit. The interest of justice would be met if the Trial Court is now directed to dispose of the main suit, on merits, within six months from the date the parties produce an authenticated copy of this order. Such suit will have to be decided on its own merits and without being influenced by any of the orders made by the Courts at the interim stage, or the fact that this*

Petition is now being disposed of by continuing the interim relief granted at the time of admission of this Petition.

4. Accordingly, this Petition is disposed of by directing the Trial Court to dispose of Special Civil Suit No.31/2007/A, which is now renumbered as Regular Civil Suit No.81/2015, as expeditiously as possible, and in any case, within six months from the date of the parties producing an authenticated copy of this order.

5. The interim order granted by this Court will operate during the pendency of the suit. This means that the mandatory injunction order shall remain stayed, but subject to the Petitioners disposing an amount of ₹15,000/- each month. The Registry should now transfer the deposited amount to the Registry of the Trial Court into the account of Special Civil Suit No.31/2007/A, which is now renumbered as Regular Civil Suit No.81/2015. This amount will have to be invested and each month, the Petitioners will continue to deposit this amount.

6. Further, it is directed that this deposited amount will abide by the final orders in the suit.

7. Parties/their Advocates to appear before the Trial Court on 20/02/2023 at 10.00 a.m. and file an authenticated copy of this order.

8. The Petition is disposed of in the above terms,

without any orders for costs.

5. By the above order, this Court directed the Trial Court to dispose of the suit within a period of six months and in the meantime the petitioners were directed to deposit the amount of Rs.15,000/- per month. Though the Registry was directed to transfer the amount deposited with this Court to the Civil Court, record shows that the amount is still lying with this Court.

6. The learned Civil Court vide order dated 14.08.2023 passed in the roznama dismissed the suit since the plaintiff failed to appear and produce evidence, however, the defendants/petitioners were directed to obey the orders passed by this Court. The order of Civil Court reads thus:

D-86 Application alongwith copy of demand draft and receipts deposited from April 2023 to August 2023

Called out today. None present for Plaintiff. Adv. Ms. C. Devi holding for Adv. S. Nayak present for the def. nos. 1,2e, 2f, 3 to 6. None present for def. no. 2a to d, 2g, 2h, 7 to 9. Mulla Ahmad Muzawar, Mulla Munaf Muzafer and Amir adane Shaik alias alias xec Amir present in person. Adv. for defendant nos. 1,2e, 2f, 3 to 6 files application alongwith copy of demand draft and receipts deposited from April 2023 to August 2023.O. P.

file. Order passed on Exh.B-1. It is seen that as per the roznama dated 23/06/2023, ultimate opportunity was given to plaintiff to appear and to proceed with the matter, considering the same being direction matter; and also since connected CMA &amp/2009 was pending and further since as per the order of Honble High Court defendants were directed to deposit an amount of Rs. 15,000 per month in the registry of trial court. Matter was kept till the end, non present for plaintiff even today, Advocate defendant filed memo alongwith annexures showing that they have deposited Rs. 15,000/- p.m. till August 2023 therefore on account of constant failure on the part of plaintiff to appear before the court, present RCS/81/2015 and CMA/7/2009 stands dismissed for non prosecution. However defendants are directed to obey the orders of the Honble High Court. Proceeding closed.

7. The suit for recovery of possession, injunction and damages was filed against petitioners during which temporary injunction was granted which was challenged before this Court in Writ Petition No.362/2012. By the order dated 17.01.2013 as quoted above, the effect and operation of the impugned order was stayed, subject to Petitioners depositing Rs.15,000/- per month in this

Court upto the disposal of the petition. Though the petition was disposed of vide order dated 03.02.2023, thereby directing the Civil Court to dispose of the suit within six months, the petitioner continued to deposit amount with this Court every month.

8. Since the suit for recovery of possession, damages and injunction has been dismissed by the Trial Court on 14.08.2023, an amount is lying with this Court.

9. The applicant would submit that the amount of Rs.18,45,000/- is deposited from time to time with this Court. Either the said amount be transferred to Civil Court or the applicants be permitted to withdraw it. It is also claimed that such amount be handed over to Mr. Mulla Ahmed Muzawar as consented by other applicants.

10. After the dismissal of the civil suit, it is clear that nothing remains pending before the Civil Court and therefore, directing the applicants/petitioners to further deposit an amount would be of no consequence.

11. Applicants disclosed that respondent/plaintiff were served by way of publication, which is clear from the record, however, till date none appeared for and on behalf of respondent to contest the present proceedings.

12. An amount is admittedly deposited by the applicants with this Court and as per the order passed on 17.01.2013. Since the writ petition as well as the civil suit are disposed of and no claim is raised by any of the parties except the applicants over the said amount, the applicants are entitled to receive an amount deposited with this court, together with interest accrued there on.

13. The application is filed on affidavit and signed by all the applicants. It is their contention that though the entire amount be handed over to applicant no.1(original petitioner no.4) and that other applicants are having no objection to issue a demand draft in favour of said applicant no.1.

14. Accordingly, Registry is directed to refund the entire amount together with accrued interest to the applicants. The demand draft be issued in the name of applicant no.1 for which the consent of all the other applicants is already mentioned in the application itself.

15. The application stands disposed of in above terms.

BHARAT P. DESHPANDE, J.