

MHNS020045822022



REGULAR CIVIL SUIT NO.785/2022

ORDER BELOW EXH. 18

1. Plaintiff filed this application for temporary injunction.
2. Perused application and say at Exh.22.

POINTS FOR DETERMINATION AND FINDINGS :-

3. After going through the case of plaintiff and defendant, following points arise for my consideration along with findings based on reasons thereon,

SR.NO.	POINTS FOR DETERMINATION	FINDINGS
(i)	Whether there is prima facie case in favour of plaintiff ?	In the negative
(ii)	Whether balance of convenience lies in favour of plaintiff ?	In the negative
(iii)	Whether irreparable loss will be caused to the plaintiff, if temporary injunction is not granted to him ?	In the negative
(iv)	What order ?	As per final order.

4. Heard learned senior advocate Mr.N.M.Gorwadkar for plaintiff and learned advocate Mr.H.S.Kenge for defendant at length. Learned advocates for plaintiff and defendant argued this application and application at Exhs. 18 and 26 at about 4.30 p.m.

REASONS

AS TO POINT NOS. (i) TO (iii) :-

5. In this suit, plaintiff filed application dated 01-01-2025 at Exh. 18 for temporary injunction. On 28-01-2025 again plaintiff filed application for temporary injunction. First application at Exh.5 for temporary injunction was filed on behalf of plaintiff. But on 20-07-2024 learned advocate for plaintiff mentioned on said application that that application to be heard alongwith the suit. So that first application for temporary injunction at Exh.5 disposed of accordingly and issues at Exh. 20 framed. Thereafter on 01-01-2025 and 28-01-2025 plaintiff filed applications for temporary injunction. In application dated 28-01-2025 at Exh. 26, following relief of temporary injunction claimed, which is reproduced as below,

“ या दाव्यात अव्वल निकाल लागेपावेतो प्रतिवादी यांनी दिनांक १५/०७/२०२२ व दिनांक २५/०८/२०२२ रोजीच्या नोटीसीच्या आधारे तसेच दावा सुरू असतांना दिलेल्या दिनांक ०३/१२/२०२४ व दिनांक २४/०१/२०२५ रोजीच्या नोटीसीच्या आधारे दावा मिळकती संदर्भात कोणतीही कारवाई करू नये, वादींच्या कब्जास हिल्ला हरकत करू नये तसेच वादीची दावा मिळकत सिल करू नये अथवा पाडून टाकू नये व त्यासंदर्भात कोणतीही कारवाई करू नये असा तुर्तातुर्त मनाई हुकूमाचा अर्ज वादींच्या लाभात प्रतिवादींच्या विरुद्ध देववावा.”

6. In applications dated 01-01-2025 at Exh.18 following relief of temporary injunction claimed, which is reproduced as below,

“ या दाव्यात अव्वल निकाल लागेपावेतो प्रतिवादी यांनी दिनांक १५/०७/२०२२ व दिनांक २५/०८/२०२२ रोजीच्या नोटीसीच्या आधारे तसेच दावा सुरू असतांना दिलेल्या दिनांक ०३/१२/२०२४ रोजीच्या नोटीसीच्या आधारे दावा मिळकती संदर्भात कोणतीही कारवाई करू नये, वादींच्या कब्जास हिल्ला हरकत करू नये तसेच वादीची दावा मिळकत सिल करू नये अथवा पाडून टाकू नये व त्यासंदर्भात कोणतीही कारवाई करू नये असा तुर्तातुर्त मनाई हुकूमाचा अर्ज वादींच्या लाभात प्रतिवादींच्या विरुद्ध देववावा.”

7. So in this way in both applications at Exhs. 18 and 26, same relief of temporary injunction claimed except reference of notice dated 24/01/2025 referred in application at Exh. 26. Learned senior advocate for plaintiff submits that both applications at Exhs.18 and 26 may be decided. Therefore, today both applications decided. There shall not be two applications for temporary injunction for one relief. In this application, plaintiff claimed relief of filing application for temporary injunction. So such relief claimed by plaintiff shall not be granted.

8. Admittedly suit property which is described in paragraph no.1 of this application is residential premises. It is the case of plaintiff that he and his wife are running Dental Clinic in the suit property. Admittedly plaintiff and his wife are running dental clinic in the suit property i.e residential area. After going through this application in toto, it reveals that plaintiff nowhere stated that he is running dental clinic in

particular area of his residential premises. When suit property is residential area, then it has to be used for residential purpose only. But, that is not the case in this suit. It is the case of plaintiff that he submitted proposal on 07-09-2022 for change of use of suit property as commercial area. As per documents filed on record on behalf of defendant, said proposal was rejected. It is the case of plaintiff that he had not received any communication about rejection of said proposal by defendant, though signature of some person appears on the document filed on behalf of defendant. Whether plaintiff received said communication of rejection of his proposal for using the suit property for commercial purpose or not, that will not be relevant at this stage. But the fact remains that proposal of plaintiff for change of use of residential premises of the suit property for commercial purpose is rejected on 23-09-2022.

9. So till today there is no order of any competent authority permitting plaintiff to use residential premises i.e. suit property for commercial purpose. Learned advocate for plaintiff filed notification dated 10-08-2021 stating that said notification permits doctor, advocate and C.A to use residential premises for their professional services. When suit property is residential area, plaintiff purchased the suit property for residential purpose as per registered sale deed dated 03-02-2021, then it must be used for residential purpose only, but not for commercial purpose. Last notice in question i.e notice dated 24-01-2025 issued to plaintiff for not using the suit property for commercial purpose i.e. for dental clinic. As per provisions of Maharashtra Regional

And Town Planning Act,1966, residential premises has to be used for residential purpose, but not for commercial purpose. Plaintiff not filed any documents on record to prima faice show that he can use suit property i.e. residential premises for commercial purpose i.e. for dental clinic. A person who is using is residential premises for commercial purpose, i.e. for dental clinic, then such person disentitles to get discretionary and equitable relief of temporary injunction. Above referred G.R. shall not override Act or Statute.

10. In this suit, till today there is no order or permission of competent authority permitting plaintiff to use residential premises of suit property for Dental Clinic i.e commercial purpose. In such circumstances, G.R dated 07-10-2017 is not helpful to plaintiff to get equitable and discretionary relief of temporary injunction because G.R shall not override Act and statute.

11. As plaintiff is running Dental Clinic in suit property of residential premises and there is residential building, wherein other flat owners are residing, then in such peculiar facts and circumstances of the case, it is not just and proper to grant equitable and discretionary relief of temporary injunction to a person that too medical officer who is running dental clinic in the residential premises and using the residential premises for commercial purpose.

12. Even otherwise, last notice dated 24-01-2025 which is issued to plaintiff is for not using the suit property for

commercial purpose otherwise it will be sealed, but not for demolishing the suit property. In such circumstances, if temporary injunction is not granted to plaintiff, then no irreparable loss will be caused to the plaintiff because he is using the residential premises for his dental clinic i.e. for commercial use, that too without obtaining requisite permission or informing competent authority about the same since 2021.

13. Learned advocate for plaintiff relying upon UDCPR Rule i.e. D.C.Regulation. In this application, plaintiff nowhere specially mentioned that he is using his whole flat for residential purpose and only small area less than 30 sq.mtr. or 50 sq.mt. is being used for running dental Clinic. So, court shall not assume and presume that plaintiff is using his whole flat for residential purpose and only small area less than 30 sq.mtr. or 50 sq.mtr. is being used for running dental Clinic. Therefore, UDCPR Rule i.e. D.C.Regulation not helpful to plaintiff to get temporary injunction as prima facie there is no evidence to show that plaintiff is using his whole flat for residential purpose but only small area less than 30 sq.mtr. or 50 sq.mt. is being used for running dental Clinic and even there is no pleading regarding it in this application.

CITATIONS:-

14. Learned senior advocate for plaintiff relied upon the cases of **Kishor Ramalu @ Rambhau Telang Vs.Municipal Commissioner, Nagpur reported in 2015(4) MH.L.J. 836 and**

Dhruv Green Field Ltd. Vs. Hukam Singh and others reported in (2002) 6 SCC 416 and Mangesh Amar Ghorpade Vs.Kalyan Dombivali Municipal Corporation reported in 2005(3) Bom.C.R.483 on the point that when less period than prescribed statutory time of one month mentioned in the notice, then such notice is illegal and void. The ratio laid down in supra cited cases shall not be considered at the time of deciding this application for temporary injunction because in this application, main grievance is about last notice dated 03-12-2024 and said notice was issued for not using the suit premises for clinical purpose. Said notice is not issued for removal of any construction in the suit property, but for not using the suit premises for commercial purpose. Prima faice there is nothing on record to show that notice dated 03-12-2024 is null and void.

15. Learned senior advocate for plaintiff relied upon the case of **V.Sasidharan Vs.M/s. Peter and Karunakar and others reported in AIR 1984 S.C. 1700** on the point that doctor's clinic is not the commercial establishment. The ratio laid down in supra cited case is not applicable to the present case as said suit was decided under the provisions of Kerala Shops and Commercial Establishments Act, whereas in present case, notice is not issued under provisions of Kerala Shops and Commercial Establishments Act.

16. Learned senior advocate for plaintiff relied upon the case of **Akola Municipal Corporation Vs.Bhalchandra S/o Govind Mahashabde reported in 2013(4) Mh.L.J 45** on the point that civil court has jurisdiction to try the suit. In this suit,

there is no application for rejection of the plaint on the ground of jurisdiction of Civil Court to try this suit. So the said citation is not applicable to the present case at the time of deciding this application for temporary injunction.

17. Learned senior advocate for plaintiff relied upon the case of **Municipal Corporation of Greater Mumbai Vs. Dr. Rekha S. Naik decided by Hon'ble High Court of Bombay in First Appeal No. 424/2012 with Civil Application no. 3383/2011** on the point that permission of corporation is not required for running medical dispensary in one room of residential premises, when area is less than 30 sq.mtr. is being used for running medical dispensary. But i.e. not case in this suit because after going through this application is toto and plaint at Exh.1, plaintiff nowhere stated that he is running the dental clinic only in small area of less than 30 mtr of his residential premises. In absence of specific pleading in this application about it, it is not just and proper to assume and presume that plaintiff is running Dental Clinic in less than 30 sq.mtr. area in his residential premises and specially when in this case plaintiff is not running medical dispensary but dental clinic. So ratio laid down in supra cited case is not applicable to this suit.

18. In this way, for all the reasons recorded above, there is no prima facie case and balance of convenience in favour of plaintiff. No irreparable loss will be caused to the plaintiff, if temporary injunction is not granted. So point nos.(i) to (iii) are answered in the negative.

AS TO POINT NO. (iv) :-

19. In the result, I pass following order,

ORDER

(i)	Application is rejected.
(ii)	Findings and observations made in this order shall not affect to the merit of the suit.

Date: 29.01.2025.

(Pratibha A. Patil)
7th Jt.Civil Judge Sr.Division
Nashik
(J.O.Code MH01831)

CERTIFICATE

I certify that this order uploaded is true and correct copy of original signed order.

Sd/-

**(H.T.Patil)
Jr. Clerk**

ORDER BELOW EXH.18

As order is passed below Exh.26 and prayers in this application and application at Exh.26 are same, hence this application does not survive.

Date: 29.01.2025.

(Pratibha A. Patil)
7th Jt.Civil Judge Sr.Division
Nashik
(J.O.Code MH01831)

ORDER BELOW EXH.01

1. In this case, concern clerk failed to give exhibit numbers to applications dated 01-01-2025 and T.I application filed on behalf of plaintiff. He neither annexed roznama dated 01-01-2025 not given given exhibits to all the applications and documents filed on 01-01-2025. Today it is found that said applications and documents not filed in this case, so it is directed to concern clerk to given exhibits to applications and documents filed dated 01-01-2025 and correct the exhibit numbers on applications filed on 08-01-2025 and 28-01-2025. s