

MAKERS DEVELOPMENT SERVICES PVT. LTD.

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v.

M. VISVESVARAYA INDUSTRIAL RESEARCH AND  
DEVELOPMENT CENTRE

(Civil Appeal No. 9709 of 2011)

NOVEMBER 14, 2011.

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**[P. SATHASIVAM AND JASTI CHELAMESWAR, JJ.]**

*Code of Civil Procedure, 1908:*

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*Or.39, rr. 1 and 2 – Temporary injunction – Grant of –  
Basic principles to be considered – Explained.*

*O. 39 – rr. 1 and 2 – Prayer for temporary injunction –  
Agreement between the parties stated to have been entered  
into for construction of a hotel and for grant of its lease – After  
construction was raised upto 80' dispute between parties – Suit  
for mandatory injunction – Temporary injunction restraining  
the defendant from obstructing the construction etc. prayed –  
Single Judge and Division Bench of High Court granting  
limited interim order restraining the defendant from in any  
manner selling, transferring or creating third party interests in  
the suit property – HELD: The single Judge was fully justified  
in granting the limited relief – The Division Bench was also  
fully justified in confirming the said limited order – As rightly  
observed by the single Judge as well as Division Bench, if  
other reliefs were granted and the plaintiff was allowed to  
proceed with the construction on the suit land, in the event of  
dismissal of suit, the defendant cannot use the land in a  
different manner with the structure without undertaking an  
enormous exercise of demolishing the same.*

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**On 4.8.2007, the appellant in C.A. No. 9709 of 2011  
filed a suit in the City Civil Court for injunction against the  
respondent. The case of the plaintiff-appellant was that**

A on 10.11.1980 and agreement was entered into between  
the parties for construction of a composite hotel complex  
and for granting the plaintiff would be granted lease of  
the Hotel (exclusive of the Convention and Exhibition  
Centre) in favour of the plaintiff-appellant for 60 years with  
B an option of renewal of lease. Pursuant to the agreement,  
the respondent put the appellant in possession of the suit  
land on 16.07.1990. Since the appellant could not  
complete the work due to disputes and differences, the  
respondent, on 31.07.2007, affixed a notice on the  
C premises notifying all concerned including the appellant  
to move out of the property and instructed its security  
persons not to permit the appellant to enter upon the said  
property. By order dated 06.08.2007, the trial court held  
that till the substantive suit was filed by the appellant, the  
D impugned notice dated 31.07.2007 would not be acted  
upon by the defendants up to and inclusive of  
17.09.2007. On 10.09.2007, the appellant moved a Notice  
of Motion No. 3499 of 2007 in a Suit bearing No. 2618 of  
2007 before the Single Judge of the High Court for a  
decree of specific performance, inter alia, praying for a  
E permanent injunction restraining the respondent from  
dispossessing the appellant. By *ad-interim* order dated  
14.09.2007, the assurance given in the City Civil Court  
was directed to be observed and the respondent was  
directed not to create any third party rights pending the  
F Notice of Motion. During the pendency of the suit, by  
letter dated 19.11.2007, the respondent terminated the  
said Agreement. The single Judge, rejected prayers  
mentioned in clauses (a) to (f) of the Notice of Motion and  
granted limited interim relief in favour of the appellant with  
G regard to prayer clause (g), namely, pending the hearing  
and final disposal of the suit, the defendant-respondent  
would not, in any manner, sell, transfer or create any third  
party rights or interests in the suit property. The appeals  
filed by the parties were dismissed by the Division Bench  
H of the High Court.

In the instant appeals filed by the parties, the questions for consideration before the Court were: (i) “whether the appellant/plaintiff has made out a case for grant of injunction in its entirety, i.e. prayer clauses (a) to (g)” and (ii) “whether learned the single Judge as well as the Division Bench of the High Court committed an error in granting limited relief in respect of clause (g)”. A B

Dismissing the appeals, the Court

HELD: 11.1 It is settled law that while passing an interim order of injunction under O. 39, rr. 1 and 2 of the Code of Civil Procedure, 1908, the court is required to consider three basic principles, namely, (a) prima facie case, (b) balance of convenience and inconvenience and (c) irreparable loss and injury. In addition to these three basic principles, a court, while granting injunction must also take into consideration the conduct of the parties. It is also established law that the court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof; and in dealing with such matters the court must make all endeavours to protect the interests of the parties. [Para 6] [116-D-F] C D E

1.2 Inasmuch as the main suit is pending, it would not be proper for this Court to delve into the matter and arrive at a categorical finding one way or the other. The finding of the single Judge about the construction of the building to the height of 80 ft. on the suit land by the appellant cannot be ignored. However, whether the defendant permitted the appellant to enter on the suit land and to carry on construction are all matters to be decided in the main suit. [paras 10 & 11] [119-E-F] F G

1.3 What was claimed by the plaintiff was not a mere prohibitory order but prayed for positive mandatory H

**A** injunction which, as rightly observed by the Division Bench, would permit the plaintiff to alter the status quo on the suit land on the date of the suit. The single Judge as well as the Division Bench on appreciation of entire materials rendered the factual finding that the balance of

**B** convenience is not in favour of granting such mandatory interim order as claimed in prayer clauses (a) to (f). As rightly observed by the single Judge as well as the Division Bench, if other reliefs were granted and the appellant was allowed to proceed with the construction

**C** on the suit land, in the event of dismissal of the suit, the defendant cannot use the land in a different manner with the structure without undertaking an enormous exercise of demolishing the same. It is relevant to point out that though the appellant had stated that it had started

**D** construction in the year 1996, even after the information by the defendant to the appellant in 2002 that the BEST had given their 'no objection' for the demolition of temporary receiving station and the appellant can proceed with the demolition, however, the fact remains,

**E** the height of the construction was only 80 ft. which shows that from the year 2001 to 2007, the appellant had not carried on construction and there was no obstruction from the side of the defendant. In view of all these factual aspects and in the light of the stand of the defendant disputing the existence of the agreement, as rightly

**F** observed by the single Judge as well as the Division Bench, further permission for construction or ancillary works cannot be granted during the pendency of the suit. The single Judge was fully justified in granting limited relief in respect of prayer clause (g) and in declining the

**G** other reliefs in clauses (a) to (f). The Division Bench was also fully justified in confirming the said limited order. Both the parties are directed to cooperate with the court for early conclusion of the hearing of Suit No. 2618 of 2007 pending before the single Judge of the High Court.

**H** [Para 12] [120-C-H; 121-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9709 of 2011. A

From the Judgment & Order dated 28.06.2011 of the High Court of Judicature at Bombay in Appeal No. 280 of 2008 in Notice of Motion No. 3499 of 2007 in Suit No. 2618 of 2007. B

WITH

C.A. No. 9710 of 2011.

Shyam Divan, F. Pooniwala, Sandeep H. Junarkar, Pratap Venugopal, Mumtaz Bandurwala, Surekha Raman, Namrata Sood, Anuj Sarma, K.J. John & Co. for the Appellant. C

Mukul Rohtagi, Praveen Samdani, Ajay Khatla Walia, Mahesh Agarwal, Radhika Gautam, Pratibha Mehta, E.C. Agrawala for the Respondent. D

**P. SATHASIVAM, J.** 1. Leave granted in both the Special Leave Petitions. Both these appeals were heard together as they arose out of the same set of facts and common questions of law were involved. E

2. SLP (C) No. 22276 of 2011 has been filed by the Makers Development Services Pvt. Ltd. against the order dated 28.06.2011 passed by the Division Bench of the Bombay High Court in Appeal No. 280 of 2008 challenging the order dated 25.04.2008 passed by the learned Single Judge in Notice of Motion No. 3499 of 2007 in Suit No. 2618 of 2007 declining the reliefs claimed in prayer clauses (a) to (f) pending final disposal of the Suit and SLP (C) No. 25972 of 2011 has been filed by M. Visvesvaraya Industrial Research and Development Centre against the same order in Appeal No. 289 of 2008 in Notice of Motion No. 3499 of 2007 in Suit No. 2618 of 2007 granting relief in terms of prayer clause (g). F G

**3. Brief facts:**

a) Makers Development Services Pvt. Ltd.-the appellant H

A herein (Original Plaintiff) is a Company registered under the  
Companies Act, 1956 engaged in the business of  
development, building, including the construction and  
management of hotels and developments pertaining to other  
hospitality services and management of properties. M.  
3 Visvesvaraya Industrial Research and Development Centre-the  
respondent herein (Original Defendant) is a Company  
incorporated under the Companies Act, 1956 and is engaged,  
inter alia, in promoting, establishing, conducting and  
undertaking scientific research.

C b) The Government of Maharashtra, by Resolutions dated  
16.10.1970 and 18.11.1974, had granted lease of certain plots  
of land to the defendant-Company at Backbay Reclamation,  
Cuffe Parade, Mumbai, who was entitled and authorized to  
enter into transactions with third parties in respect of the said  
D land. A portion of that land admeasuring 13,326 sq. mts. which  
forms a part of the larger land held by the defendant-Company  
is the subject-matter of the present case.

E c) An agreement dated 10.11.1980 was entered into  
between the parties for construction of a composite hotel  
complex consisting of a Hotel Building, a Convention Centre  
and an Exhibition Centre on the Suit Land (Tower No.2) and  
the plaintiff would be granted lease of Hotel (exclusive of the  
Convention and Exhibition Centre) for 60 years with an option  
F of renewal of lease. This agreement came to be modified from  
time to time.

d) Pursuant to the Agreement, the respondent put the  
appellant in possession of the Suit Land on 16.07.1990, which  
continues to remain with the appellant till date.

G e) Since the appellant could not complete the work and  
due to disputes and differences, the respondent, on  
31.07.2007, affixed a notice on the premises notifying all  
concerned including the appellant to move out of the property

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and instructed its security persons not to permit the appellant to enter upon the said property. A

f) On 04.08.2007, the appellant filed a suit for injunction before the City Civil Court, Mumbai seeking interim and final reliefs restraining the respondent from taking any illegal steps. By order dated 06.08.2007, the learned Judge held that till the substantive suit is filed by the appellant, the impugned notice dated 31.07.2007 will not be acted upon by the defendants upto and inclusive of 17.09.2007. B

g) *On 10.09.2007, the appellant moved a Notice of Motion No. 3499 of 2007 in a Suit being No. 2618 of 2007 before the learned Single Judge of the Bombay High Court for a decree of specific performance, inter alia, praying for a permanent injunction restraining the respondent from dispossessing the appellant. By ad-interim order dated 14.09.2007, the assurance given in the City Civil Court was directed to be observed and the respondent was directed not to create any third party rights pending the Notice of Motion. During the pendency of the suit, by letter dated 19.11.2007, the respondent terminated the said Agreement. The learned single Judge, after referring the documents and affidavits on record, rejected prayer clauses (a) to (f) of the Notice of Motion and granted limited interim relief with regard to prayer clause (g) in favour of the appellant.* C  
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h) Aggrieved by the order of the learned single Judge, the appellant preferred an appeal being Appeal No. 280 of 2008 before the Division Bench of the High Court. With regard to the limited relief granted by the learned single Judge, the respondent also filed an appeal being Appeal No. 289 of 2008 before the Division Bench of the High Court. F  
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i) The Division Bench, by a common judgment, upheld the order of the learned single Judge and dismissed both the appeals. Challenging the order of the Division Bench of the H

A High Court, the appellant and the respondent filed separate special leave petitions before this Court.

4. Heard Mr. Shyam Divan, learned senior counsel for the appellant and Mr. Mukul Rohatgi & Mr. Praveen Samdani, learned senior counsel for the respondent.

5. The points for consideration in these appeals are:-

a) Whether the appellant/plaintiff has made out a case for grant of injunction in its entirety, i.e. prayer clauses (a) to (g)?

b) Whether learned single Judge as well as Division Bench of the High Court committed an error in granting limited relief in respect of clause (g)?

6. It is settled law that while passing an interim order of injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, the Court is required to consider three basic principles, namely, a) prima facie case, b) balance of convenience and inconvenience and c) irreparable loss and injury. In addition to the above mentioned three basic principles, a court, while granting injunction must also take into consideration the conduct of the parties. It is also established law that the Court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof and in dealing with such matters the court must make all endeavours to protect the interest of the parties.

7. With the above principles, let us consider the claim of both the parties.

8. The appellant/plaintiff, who filed Suit No. 2618 of 2007 on the file of original side of the High Court of Bombay prayed for the following interim reliefs pending hearing and final disposal of the said suit:

“(a) That pending the hearing and final disposal of the Suit, the Defendant be ordered and directed to do, sign, execute, deliver and register all such acts, deeds, matters writings, documents, authorities papers, plans, sanctions and things as may be necessary to enable the Plaintiff to continue construction on the Suit Land in terms of the Suit Contract;

(b) That pending the hearing and final disposal of the Suit, the Defendant by itself, its servants and agents or any person or persons claiming by, from, through or under them be restrained by an order and injunction of this Court from dispossessing the Plaintiff or removing the authorized representatives, employees, staff, workers and labourers of the Plaintiff and their respective family member or their belongings and articles or the construction materials, equipment and other belongings of the Plaintiff from the Suit Land;

(c) That pending the hearing and final disposal of the Suit, it be ordered and decreed that the Defendant to allow the Plaintiff to continue construction on the Suit Land and unhindered access to the Suit Land and allow ingress to and egress from the Suit Land, by the Plaintiff, its representatives, employees and contract labour as also for all construction materials and equipment without in any manner, directly or indirectly, obstructing or hindering the Plaintiff.

(d) That pending the hearing and final disposal of the Suit, the Defendant by itself, its servants and agents or any person or persons claiming by, from, though or under them be restrained by an order and injunction of this Court from in any manner restraining, preventing impending or obstructing implementation of the Suit Contract or construction on the Suit Land or access to and ingress to and egress from the Suit Land, of the Plaintiff or its authorized representatives, employees. workers, labourers

A and their respective family members or preventing, impeding or obstructing construction material or equipment of the Plaintiff from being brought on to the Suit land or in any manner, directly or indirectly, by any act of omission or commission, withholding or causing to be withheld  
B essential utilities such as power and water supply to the Suit Land for construction by the Plaintiff;

(e) That pending the hearing and final disposal of the Suit, the Defendant by itself, its servants and agents or any person or persons claiming by, from, through or under them  
C be restrained by an order and injunction of this Court from in any manner, whether directly or indirectly, revoking or acting on any purported revocation of the Letter of Authority granted by the Defendant to the Plaintiff or in any manner, whether directly or indirectly, hindering, impeding or  
D obstructing construction on the Suit Land in terms of the Suit Land in terms of the Suit Contract;

(f) That pending the hearing and final disposal of the Suit, the Defendant by itself, its servants and agents or any person or persons claiming by, from, through or under them  
E be restrained by an order and injunction of this Court from in any manner committing unlawful trespass or from in any manner intimidating the Plaintiff, its employees, workers, labourers and other agencies appointed by the Plaintiff;

(g) That pending the hearing and final disposal of the Suit, the Defendant by itself, its servants and agents or any person or persons claiming by, from, through or under them  
F be restrained by an order and injunction of this Court from, in any manner, selling transferring, dealing with, disposing  
G of, alienating encumbering or creating any third party rights or interest in, or entering into any agreement or arrangement with any one else in respect of the Suit Land or any part thereof;"

H 9. Among the above prayers for interim reliefs, the learned

single Judge granted relief only in respect of prayer clause (g) that too with a condition, namely, except the words "dealing with". The learned single Judge on satisfying himself and after thorough scrutiny of the materials placed rejected the relief insofar as prayer clauses (a) to (f), which resulted in filing of above two appeals by the appellant and the defendant. It is the claim of the appellant/plaintiff that on the basis of the contract between the parties, the learned single Judge and the Division Bench should have granted an order permitting the appellant to carry on further construction especially when construction of about 80 ft. had already been raised by the appellant on the suit land. On the other hand, it is the case of the defendant that there is no existing agreement between the parties and the only point is that the parties have agreed to enter into an agreement and, therefore, the learned single Judge as well as the Division bench were not justified even in granting interim order in terms of prayer (g).

10. Inasmuch as the main suit is pending, it would not be proper for this Court to delve into the matter and arrive at a categorical finding one way or other. Accordingly, we have to find out whether there is prima facie case and 'balance of convenience' in terms of principles mentioned above.

11. The finding of the learned single Judge about the construction of the building to the height of 80 ft. on the suit land by the appellant cannot be ignored. However, whether the defendant permitted the appellant to enter on the suit land and to carry on construction are all matters to be decided in the main suit. The limited relief granted in clause (g) by the learned single Judge is quite understandable, otherwise, it could be possible for the defendant to deal with the suit land with third parties or encumber it before the final disposal of the suit. However, as rightly observed by the learned single Judge as well as Division Bench, if other reliefs which we have already extracted above are granted, in the event of dismissal of a suit, undoubtedly, it would create enormous difficulties for the

A defendant using the plot or land freely and without any difficulty. In other words, if the appellant was allowed to proceed with the construction on the suit land, in the event of dismissal of suit, the defendant cannot use the land in a different manner with the structure without undertaking an enormous exercise of demolishing the same. Further, what was claimed by the plaintiff was not a mere prohibitory order but prayed for positive mandatory injunction which, as rightly observed by the Division Bench, would permit the plaintiff to alter the status quo on the suit land on the date of the suit.

C 12. The learned single Judge as well as Division Bench on appreciation of entire materials rendered the factual finding that the balance of convenience is not in favour of granting such mandatory interim order as claimed in prayer clauses (a) to (f). It is relevant to point out that though the appellant had stated that it had started construction in the year 1996, even after the information by the defendant to the appellant in 2002 that the BEST had given their 'no objection' for the demolition of temporary receiving station and the appellant can proceed with the demolition, however, the fact remains, the height of the construction was only 80 ft. which shows that from the year 2001 to 2007, the appellant had not carried on construction and there was no obstruction from the side of the defendant. In view of all these factual aspects and in the light of the stand of the defendant disputing the existence of the agreement, as rightly observed by the learned single Judge as well as Division Bench, further permission for construction or ancillary works cannot be granted during the pendency of the suit. We are satisfied that the learned single Judge was fully justified in granting limited relief in respect of prayer clause (g) and declined the other reliefs in clauses (a) to (f). The Division Bench was also fully justified in confirming the said limited order. Though learned senior counsel for the respondent has prayed for certain directions such as execution of a mortgage deed etc., for the same reasons mentioned above, we are not inclined

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to grant such relief as claimed. As observed earlier, at this stage, it is not desirable to go into all the details and render a specific finding which would undoubtedly affect the claim of both the parties in the main suit. On the other hand, we are in entire agreement with the prima facie conclusion arrived at by the learned single Judge and the Division Bench.

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13. Inasmuch as, as early as on 25.04.2008, the learned single Judge directed hearing of the suit be expedited, taking note of various other aspects/impediments highlighted by both the parties including construction of a protection/security wall on the sea side, we request the learned single Judge of the High Court to dispose of the suit being No. 2618 of 2007 as early as possible preferably within a period of nine months from the date of the receipt of the copy of this judgment. We also direct both the parties to cooperate with the court for early conclusion of the hearing as directed above.

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14. In the light of the above discussion and reasonings, we find no merit in both the appeals, consequently, they are dismissed with no order as to costs.

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R.P.

Appeals dismissed.