

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 12747 OF 2025

Mondelez India Foods Private Limited  
(Previously known as Cadbury India  
Company Ltd), a Company incorporated  
under the Companies Act, 1956,  
having its registered office having  
its registered office at One International  
Centre, 20<sup>th</sup> Floor, Tower 3(Wing C),  
Parel, Mumbai – 400 013.

..Petitioner

**Versus**

1. Vishal Pansare,  
Adult, Residing at Pansare Wada,  
House No. 0326 Induri,  
Taluka Maval, Pune – 410 507.
2. Suresh Shankar Shinde  
Adult, Residing at House No. 1236,  
Induri, Taluka Maval, Pune – 410 507.
3. Madhukar Shinde  
Adult, Residing at House No. 0625,  
Induri, Taluka Maval, Pune – 410 507.
4. Bunty Shinde  
Adult, Residing at Indrayani Nagar,  
House No. 1254, Ganpati Mandir,  
Induri Nanoli Road, Induri,  
Taluka Maval, Pune – 410 507.
5. Tanaji Tukaram Shinde  
Adult, Residing at Induri,  
House No. 1254, Ganpati Mandir,  
Taluka Maval, Pune – 410 507.

6. Sanrhajit Tukaram Shinde,  
Adult, Residing at Induri, House No. 0280,  
Taluka Maval, Pune – 410 507.

7. Dhohdiba Tukaram Pansare,  
Adult Residing at Pansare Wada,  
House No. 0326, Taluka Maval,  
Pune – 410 507.

8. Dashrath Chilaji Shinde,  
Adult, Residing at House No. 1268,  
Induri, Taluka Maval, Pune – 410 507.

... Respondents

Mr. Zal Andhyarujina, Senior Advocate, with Maithili Parikh, Omar  
Ahmad, Vikram Shah, Suraj Iyer and Gauri Joshi, i/b Ganesh  
and Co, for the Petitioner.

Mr. Kamalesh P Mali, for the Respondents.

**CORAM: N. J. JAMADAR, J.**

**RESERVED ON : 8<sup>th</sup> JUNE 2026**

**PRONOUNCED ON : 23<sup>rd</sup> JUNE 2026**

**JUDGMENT:**

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioner takes exception to a judgment and order dated 30<sup>th</sup> August 2025 passed by the learned District Judge, Vadgaon Maval, Pune, in MCA No. 18 of 2024, whereby the said Appeal preferred by the Petitioner-Plaintiff against an order dated 12<sup>th</sup> July 2024 passed by the learned Civil Judge, Vadgon Maval, Pune, in RCS No. 309 of 2023,

thereby rejecting an Application for temporary injunction, came to be dismissed.

3. The background facts necessary for the determination of this Petition can be stated as under:

3.1 For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the trial Court.

3.2 The Plaintiff is a company registered under the Companies Act, 1956. It is engaged in the business of manufacturing and selling *inter alia*, confectionery and beverages. One of the manufacturing plants of the Plaintiff is situated at Gat No. 332, 333, village Induri, Taluka Maval, District Pune.

3.3 Defendant Nos. 1 to 8 are the residents of Induri, Pune.

3.4 The Plaintiff was in need of additional power supply. Thus the Plaintiff submitted an Application to the Maharashtra State Electricity Distribution Company Ltd (“MSEDCL”) seeking sanction for an additional power supply of 4689 KV.

3.5 Upon approval by MSEDCL, the Plaintiff moved the concerned Authorities seeking permission to lay an underground HT cable from the MSEDCL sub-station at Talegaon to the Plaintiff’s Plant at Induri.

3.6 Upon obtaining the requisite permissions from MSEDCL, MIDC, Zilla Parishad and the no objection certificate of the Village Panchayat,

Induri, the Plaintiff commenced the work of laying feeder lines and the erection of poles across a 14 km stretch between the MSEDCL Ambi sub-station and the Plaintiff's factory.

3.7 The Plaintiff has completed the work of laying the HT cable for the entire stretch of 13.8 km, except for 0.2 km, i.e. about 200 meters, as the Defendants caused an obstruction in laying of cables for the said stretch. Unreasonable demands were allegedly made by the Defendants to allow the Plaintiff to lay the cable over the balance portion.

3.8 The Plaintiff addressed a cease and desist notice to the Defendants on 3<sup>rd</sup> November 2023. As the unlawful obstruction persisted, the Plaintiff was constrained to institute the Suit seeking a decree of permanent injunction to restrain the Defendants and their agents, assigns, etc from obstructing or causing any hindrance in laying the underground feeder line by the Plaintiff and/or its agents on the piece and parcel of strip of land situated on the side margin of the public/Zilla Parishad Road having a length of 230 meters abutting the property bearing Gat No. 391, Village Induri ("the schedule property").

3.9 In the said Suit, the Plaintiff filed an Application seeking temporary injunction to restrain the Defendants from obstructing or causing hindrance in the laying of underground express feeder line through the schedule property.

3.10 The Application was resisted on behalf of the Defendants.

3.11 The substance of the resistance of the Defendants was that the Plaintiff is not carrying on the work of laying the express feeder line on the Zilla Parishad road or the side margin thereof as asserted, but under the garb of laying the cables on the side margin of the Zilla Parishad road, the Plaintiff was attempting to lay the underground cable through the private properties of the Defendants. The Plaintiff has not placed on record any document to show that the land through which the Plaintiff intends to lay the cable is the Zilla Parishad road.

3.12 It was contended that, the description of the schedule property is incorrect. There are agricultural lands and residential houses on the land through which the Plaintiff intends to lay the cable. Thus, the Plaintiff has no right to lay the cable through the private properties of the Defendants. In any event, there is an alternate efficacious remedy to the Plaintiff under the provisions of the Electricity Act, 2003 (“the Electricity Act”) and the Rules framed under, if the Plaintiff intends to lay the cable through the private property. Thus, the Plaintiff did not deserve any injunctive relief.

3.13 After appraisal of the pleadings and material on record, including the report submitted by the Executive Engineer, Zilla Parishad, who was appointed as a Commissioner to conduct a local inspection and submit a report under the provisions of Order 39 Rule 7 of the Code of Civil Procedure, 1908 (“the Code”), the learned Civil Judge held that the

Plaintiff failed to make out a *prima facie* case that the strip of road through which the Plaintiff intended to lay the cable belonged to the Zilla Parishad, and that the elements of balance of convenience and irreparable loss tilted in favour of the Defendants. It was further observed that in view of the mechanism provided under Rule 3 of the Works of Licensees Rules, 2006, the Plaintiff, in the case of resistance or obstruction to the work of laying the cable, had an alternative efficacious remedy of approaching the Authorities thereunder and, thus, the bar under Section 41 of the Specific Relief Act, 1963, was attracted.

3.14 Being aggrieved, the Petitioner-Plaintiff preferred an Appeal before the District Court.

3.15 By the impugned judgment and order, the learned District Judge was persuaded to dismiss the Appeal finding no fault with the exercise of discretion by the trial Court.

3.16 Thus, being further aggrieved, the Plaintiff has invoked the writ jurisdiction of this Court.

4. I have heard Mr. Zal Andhyarujina, the learned Senior Advocate, for the Petitioner-Plaintiff, and Mr. Kamlesh Mali, the learned Counsel for the Respondents-Defendant No.1, at some length. The learned Counsel took the Court through the pleadings and the material on record.

5. At the outset, Mr. Andhyarujina, would urge the Courts below have singularly failed in applying the well-settled principles of law while considering a prayer for the grant of a temporary injunction. The material on record, according to Mr. Andhyarujina, clearly reveals that the proposed work of laying the HT cable was almost complete. The last leg of laying of cable for 200 meters, was unjustifiably held up by the obstructionist approach resorted to by the Defendants.

6. Mr. Andhyarujina laid emphasis on the fact that MSEDCL and all the concerned Authorities had granted approval/no objection for laying the HT cable. The communication dated 21<sup>st</sup> November 2012 issued by the Zilla Parishad, Pune, clearly records that permission was granted *inter alia* to lay the cable at a distance of 12 meters from the center or 4.5 meters, whichever is more, from the edge of Other District Road No. 49, i.e. Induri-Nanoli Tarf Chakan, up to the boundary of MIDC. More than 99% of work of the laying of the cable abutting the road was already completed.

7. In the backdrop of these facts, the learned Civil Judge as well as the learned District Judge completely misdirected themselves in negating the claim of the Plaintiff on wholly erroneous grounds like permission was not obtained from the Public Works Department (“PWD”) to whom the road was transferred. In the process, the Courts

below lost sight of the necessity and imperativeness of the electricity cable work.

8. Even where the electricity cables are to be laid through a private property, which is not at all the case at hand, Mr. Andhyarujina would urge, the licensee has the authority to lay cables through the private land and the only right of landowner is to claim the compensation. To this end, Mr. Andhyarujina placed a very strong reliance on the judgment of the Supreme Court in the case of **Century Rayon Limited Vs IVP Limited And Ors**<sup>1</sup> and a Division Bench Judgment of Telangana High Court in the case of **Jala Maisaiah And Ors Vs The Transmission Corporation of Telangana Limited and Ors.**<sup>2</sup>

9. Mr. Andhyarujina further submitted that, the element of balance of convenience was wholly misconstrued by the Courts below. The entire work of laying the cable for 13.8 km has been rendered nugatory by the unwarranted and uncalled for resistance of Defendants. In contrast, even if it is assumed that the underground cable is laid through the private properties, the Defendants would not suffer any loss as the user of surface of land would not be restricted in any manner. This factor was completely ignored by the Courts below.

10. Lastly, Mr. Andhyarujina would urge, the Plaintiff is willing to abide by any conditions that the Court may impose in the event the

---

1 (2021) 20 SCC 758.

2 Writ Petition No. 132 of 2020, decided on 24<sup>th</sup> February 2020.

Court restrains the Defendants from causing obstruction and permits the Plaintiff to lay the cable for the remaining 200 meters stretch. It was urged with tenacity that, the equities could be balanced by imposing appropriate conditions instead of completely preventing the Plaintiff from executing the work. An Additional Affidavit was filed on behalf of the Petitioner giving an undertaking to comply with reasonable directions and conditions.

11. Per contra, Mr. Kamlesh Mali, the learned Counsel for the Respondents-Defendants, supported the impugned orders. At the threshold it was submitted that, as the Courts below have recorded concurrent *prima facie* findings and have exercised their discretion by ascribing justifiable reasons, this Court in exercise of its limited supervisory jurisdiction may not interfere with the impugned orders.

12. Secondly, Mr Mali would urge, the grant of interim relief of the nature sought by the Plaintiff would amount to the grant of final relief. The contentious issues are yet to be adjudicated on the basis of the evidence, that the parties may adduce. Thus, at this stage, the Court cannot grant interim relief which partakes the character of final relief.

13. Thirdly, Mr. Mali submitted with a degree of vehemence that, the Plaintiff has failed to demonstrate that the work of laying the underground cable was through the Zilla Parishad road. Once such concurrent *prima facie* findings have been recorded by the trial Court

and the District Court, the Plaintiff can only work out its remedies in accordance with The Works of Licensees Rules, 2006. In that event, the Plaintiff has an efficacious remedy to approach the Authorities designated to deal with the obstruction to the cable laying work by persons who assert proprietary rights over the property through which the cable is proposed to be laid.

14. Lastly, Mr. Mali would urge the reliance on the judgment in the case of **Century Rayon Limited (Supra)** is of no assistance to the Plaintiff as the Plaintiff cannot be said to be a “licensee” within the meaning of the Electricity Act 2003. The Plaintiff is essentially a consumer and cannot equate itself with a licensee.

15. I have given anxious consideration to the rival submissions canvassed across the bar.

16. Before adverting to the contentious issues, it may be apposite to note few facts which by and large appear to be uncontroverted, even at a *prima facie* consideration stage. The MSEDCL sanctioned the additional power supply to the extent of 4689 KV vide letter dated 4<sup>th</sup> June 2012. The SE (PRC) MSEDCL, Pune was entrusted to work out the details of execution of the work for the dedicated distribution facility for extending the supply by laying 22 KV express feeder and the total cost of the infrastructure was to be borne by the Plaintiff. Vide communication dated 9<sup>th</sup> July 2012, MSEDCL accorded approval for the

estimate along with the supervision charges fixed at the rate of 1.3% normative charge. The Maharashtra Industrial Development Corporation also granted permission to lay underground HT cable from MSEDCL, Sub-Station Talegaon to the MIDC boundary, vide communication dated 7<sup>th</sup> December 2012. The Zilla Parishad, Pune, granted sanction for laying the cable abutting the Other District Road No. 49, on 27<sup>th</sup> November 2012.

**17.** Nearer home to the dispute, a Resolution was passed in the meeting of the Induri Village Panchayat held on 13<sup>th</sup> October 2021, thereby granting permission to the Plaintiff to lay underground cable along the Nanoli-Shiv Road to the Plaintiff's plant subject to the payment of the requisite charges and connecting the Village Panchayat water distribution scheme to the said electric supply line. The Zilla Parishad, Pune also granted permission to the Petitioner to lay the underground cable through drilling method up to the Induri Village border by a communication dated 23<sup>rd</sup> March 2023.

**18.** *Prima facie*, the Plaintiff had obtained all the requisite permissions and no objection from the concerned authorities. It could not be seriously controverted that the Plaintiff, on the strength of the sanction accorded by MSEDCL, and the permissions/approvals granted by the other Authorities has completed the work of laying the cable for

a distance of 13.8 km and the work remains to be executed for the final stretch of 200 meters.

19. The core controversy between the parties thus arose over the entitlement of the Plaintiff to lay the cable for the remaining stretch. As noted above, the thrust of the resistance on behalf of the Defendants was that under the guise of laying cable through the margin of the road, the Plaintiff was actually laying the cable through the private lands of the Defendants and others.

20. The learned District Judge was of the view that the Plaintiff failed to demonstrate that the disputed stretch at which the work was stopped, on account of the alleged obstruction caused by the Defendants, falls either within the margin of the road or the private properties of the Defendants. Support was sought to be drawn to this view from the map of the Survey Nos. (*Gat map*) produced by the Defendants which did not indicate the road flowing between Gat No. 370 and 392 to 394. Thus the learned District Judge held that there was no *prima facie* case.

21. This Court is conscious of the limits of interference with the discretionary orders passed by the Courts and Tribunals, in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India, especially when there are concurrent findings recorded by the Courts below. The supervisory jurisdiction under Article 227 cannot be

permitted to be converted into an appellate jurisdiction, in disguise. It is not open for the High Court to re-appreciate, reweigh and review evidence/material and take a different view of the matter. However, where the discretion has been exercised in a totally perverse manner or the impugned order suffers from patent illegality, it is the duty of the High Court to interfere with such order and correct the mistake committed by the Courts/Tribunals so as to keep them within the bounds of their jurisdiction.

**22.** In the case of **Rajendra Diwan Vs. Pradeep Kumar Ranibala & Anr,**<sup>3</sup> the Constitution Bench of the Supreme Court has expounded the limits of the supervisory jurisdiction under Article 227 of the Constitution of India, as under:-

“85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised “ in the cloak of an appeal in disguise”.

86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts

---

<sup>3</sup> 2019 SCC OnLine SC 1586

restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyse the evidence and/or materials on record. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on the facts and circumstances of the case. The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law.”

**23.** The question that comes to the fore is, whether the case at hand is such that this Court would be justified in interfering with the discretionary orders passed by the Courts below?

**24.** At the heart of the controversy is the character of the property, albeit *prima facie*, through which the Plaintiff proposes to lay the underground cable. The Courts below had the benefit of the report of the Executive Engineer, Zilla Parishad who was appointed to conduct a local inspection and submit a report. The Report dated 22<sup>nd</sup> April 2024 throws light on the controversy. It indicates that the road branching out of the State Highway No. 55 and leading to Major District Road No. 108, was initially an Other District Road No. 61 having a length of 24 km. The said ODR No. 61 was under the control of the Zilla Parishad,

Pune. As the said road has since been upgraded to a Major District Road, it has now been entrusted to the Public Works Department.

25. While the said road was under the control of the Zilla Parishad, Pune, near Induri Village having a link 0/0 to 0/700, with the no objection of the Zilla Parishad, Pune Metropolitan Region Development Authority constructed a concrete road having a width of 3.75 meters and the further stretch is of tar-road. The said road is used for transportation. The Plaintiff has completed the laying of the cable from link No. 14/00 to link No. 0/200 aggregating to 13.80 km. The villagers have obstructed the cable laying work for the remaining 200 meters at link No. 0/0 to 0/200 contending that the land beneath the said road is their private property.

26. The Executive Engineer has annexed the maps and the photographs (pages 277 to 279). A bare perusal of the said photographs reveals, the existence of ODR 61, branching out of State Highway No. 55. The photographs also reveal that there are structures abutting both sides of the said road.

27. The Courts below have made an attempt to downplay the aforesaid report of the Executive Engineer who was appointed as a Court Commissioner. The learned Civil Judge after adverting to the contents of the report went on to question the competence of the Zilla Parishad to grant permission to lay the underground cable recording

that, ODR No. 61 was entrusted to Zilla Parishad only for the purpose of maintenance. Secondly, it was held, the Plaintiff had not obtained the permission of the Public Works Department as the report reveals that ODR No. 61 was transferred to the Public Works Department. Thirdly, in the view of the learned Civil Judge, after the road construction work was completed by PMRDA, the Plaintiff ought to have been obtained permission from PMRDA as well.

**28.** Lastly, even though the existence of road appeared indisputable, the learned Civil Judge went on to sidestep the issue by observing that the Plaintiff did not plead nor produce any documents to show that the concerned Authorities had lawfully acquired the land over which the road was laid from the persons whose property was situated on both sides of the road.

**29.** The learned District Judge, on his part, attempted to dilute the factum of the existence of the road and the clear and categorical report of the Executive Engineer by laying emphasis to the survey map (*Gat map*) which did not indicate the existence of the road between Gat Nos. 370 and 390.

**30.** In the view of this Court, both the learned Civil Judge and the learned District Judge committed gross error in law in construing the import of the documents and were swayed by totally irrelevant considerations. In the process, the Courts below have ascribed reasons

which are ex-facie perverse. It appears in an overzealous attempt to somehow support a finding that no *prima facie* case was made out, a defence was sought to be constructed for the Defendants, which was not borne out by the material on record. The Courts were clearly in error in making an effort to efface the facts which stared in the face.

**31.** In fairness to Mr. Mali, it must be noted that, when confronted with the record, Mr. Mali could not dispute the existence of the road on the disputed stretch. Once, the existence of the road along which the underground cable is to be laid is *prima facie* established, the edifice of the resistance to the laying of the cable crumbles. It would be an uphill task for the Defendants to establish that land over which the road runs is owned by them.

**32.** At any rate, the nature of the work that was being executed by the Plaintiff, pursuant to the sanction granted by the licensee, could not have been lost sight of by the Courts below. Even when there is material to show that the laying of cables is proposed through the private land, the licensee cannot be restrained from laying the cables in accordance with the rules, and subject to the liability to pay the compensation wherever provided .

**33.** The provisions contained in the Indian Telegraph Act, 1885 (“the Telegraph Act”) assumes importance. Section 10 of the Telegraph Act, empowers the telegraph authority to place and maintain a

telegraph line under, over, along, or across, and posts in or upon, any immovable property, subject to the conditions under Clauses (a) to (d) of the proviso thereto. Clause (d) of Section 10 mandates that the telegraph authority shall do as little damage as possible in the exercise of its powers to place and maintain telegraph lines and posts and shall pay full compensation to all persons interested for any damage sustained by them by reason of the existence of those powers.

**34.** Under Section 16(1) of the Telegraph Act, if the exercise of the powers mentioned in Section 10 in respect of property referred to in Clause (d) is resisted or obstructed, the District Magistrate may in his discretion, order that the telegraph authority shall be permitted to exercise them. Further, as per Section 16(3), a dispute as to the sufficiency of the compensation is to be determined by the District Judge, within whose jurisdiction the property is situated.

**35.** In the case of **Power Grid Corporation of India Limited Vs Century Textiles And Industries Limited and Ors,**<sup>4</sup> with reference to the provisions of the Telegraph Act and the Electricity Act, the Supreme Court expounded the object of empowering the licensee to lay the electricity transmission lines, in the following words:

“21. It is not in dispute that in exercise of powers under the aforesaid provision, the Appropriate Government has conferred the powers of Telegraph Authority vide notification dated December 24, 2003 exercisable under Indian Telegraph Act, 1885

---

<sup>4</sup> (2017) 5 SCC 143.

upon the Power Grid. It may also be mentioned that a Central Transmission Utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central Transmission Utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as Authority under the Indian Telegraph Act, 1885, it acquires all such powers which are vested in a Telegraph Authority under the provisions of the Indian Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Indian Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/ obstruction in achieving this objective and through the scheme of the Indian Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.”

(emphasis supplied)

36. Following the aforesaid pronouncement in the case **Century Rayon Limited (Supra)**, on which reliance was placed by Mr. Andhyarujina, it was enunciated that the decision in **Power Grid Corporation of India Limited (Supra)** highlights the imperative and need for unobstructed access to lay down the electricity transmission lines in the larger public interest as these are essential requirements for

growth and development of the country, and its economy, and for the well being of the citizens.

**37.** A submissions was sought to be canvassed on behalf of the Respondents that, in this case, the aspect of statutory empowerment of the licensee to lay the cable does not arises as the Plaintiff was laying the cable to obtain additional power supply for its unit, and thus it would not be for a public purpose. At first blush, the submission appears attractive. However, on a closer scrutiny the submission does not carry much substance. From a perusal of the documents under which the additional load was sanctioned, it becomes evident that to facilitate the additional supply, a 14 km dedicated distribution facility was provided by laying 22 KW express feeder. The cost of the said work was however to be borne by the Plaintiff. Merely because the costs is to be incurred by the Plaintiff, it does not imply that the said dedicated distribution facility ceased to be the work carried out by the licensee.

**38.** If the licensee is empowered to provide such dedicated distribution facility, it cannot be urged that since the facility is meant for a particular consumer, the licensee would not be entitled to exercise its statutory rights to lay the cable under the Telegraph Act and the Electricity Act. A constricted view of the matter would denude the licensee of the authority to carry out the work to advance the object of such statutory empowerment.

39. The view of the trial Court that the Plaintiff has an efficacious alternate remedy under the Works of Licensees Rules, 2006 and should approach the District Magistrate or the Commissioner of Police or any other Officer authorized by the State Government under the proviso to Rule 3(1);. does not appear to be correct. The proviso to Rule 3(1) would come into play where the owner or occupier of the land or building raises objections in respect of the works carried out by the licensee, where it is either undisputed or indisputable that the person raising the objection is the owner or occupier of the building or land, on which the licensee proposes to carry out the work.

40. In the case at hand, in view of the *prima facie* findings that the road exists and the cable is to be laid along the proposed road, and conversely the absence of material to demonstrate *prima facie* ownership or occupation of the Defendants over the disputed stretch of land, the proviso to Rule 3(1) does not seem to be attracted. Resultantly, the prayer for injunctive relief could not have been declined on the ground of the availability of an alternative remedy, even if one were to assume that the remedy to approach the authorities under the proviso to Rule 3(1) is efficacious.

41. Thus leads me to the pivotal aspect of the balance of convenience. It is well recognized mere existence of *prima facie* case is not by itself sufficient to grant injunction. Apart from the consideration

as to whether the refusal to grant injunction would result in “irreparable injury”, the scale of “balance of convenience” must tilt in favour of the party seeking injunction. The balance of convenience is an important consideration even if there is a serious question or *prima facie* case in support of grant of injunction.

42. In the case of **Hubbard And Anr Vs Vosper And Anr**,<sup>5</sup> the Court of Appeal, while dealing with a case of infringement of copyright, emphasized the element of the balance of convenience in the following words:

“ ... .. In considering whether to grant an interlocutory injunction, the right course for a Judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and then decide what is best to be done. Sometimes, it is best to grant an injunction so as to maintain the status quo until the trial. At other times, it is best not to impose a restraint upon the Defendant but leave him free to go ahead.”

43. In the case of **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi**<sup>6</sup>, the Supreme Court expounded the elements of the, “irreparable loss” and “balance of convenience” which ought to weigh with the Court, while exercising sound judicial discretion in granting or

---

5 (1972) 2 Q.B. 84.

6 2024 SCC OnLine SC 3538.

refusing to grant injunction. The observations in Paragraph No. 34 read as under :-

“34. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is “a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raise, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the

injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See : Dalpat Kumar v. Prahlad Singh reported in (1992) 1 SCC 719 : (AIR 1993 SC 276).)

(emphasis supplied)

44. The Courts have not weighed the consequences of the refusal to grant an injunction vis-a-vis the consequences that entail the grant of injunction qua the Defendants in a correct perspective. As noted above, the facts are quiet hard. The Plaintiff has completed the cable laying work for a stretch of 13.8 km. On account of the resistance and obstruction by the Defendants the cable could not be laid for a short stretch of only 200 meters. The Courts below did not bestow adequate consideration to this factor.

45. Conversely, the laying of the underground cable would hardly cause any irretrievable damage to the disputed stretch of land even if one were to assume that the Defendants are in the occupation of the disputed stretch. The Plaintiff has been permitted to lay the cable by adopting the horizontal directional drilling method.

46. In the Additional Affidavit filed on behalf of the Plaintiff, it is averred that the Plaintiff is executing the boring work by means of ARS

horizontal directional drilling. It is a specialized trenchless technology whereby drilling is carried out entirely beneath the surface of the road, and the process is so designed and calibrated that the drilling activity shall remain strictly confined to the designated alignment. The laying of cable in such fashion has not caused any damage, or adverse impact to the adjoining land parcels and the use of the land continues in the normal course including that for agricultural use.

47. At any rate, the damage, if any, resulting from the laying of the cable is such that it can be compensated in terms of money. In contrast, if the Plaintiff is not allowed to lay the cable for remaining disputed stretch of land, the entire exercise of laying the cable for 13.8 km would be rendered nugatory.

48. These elements of the balance of convenience and irreparable loss also bear upon the submissions canvassed on behalf of the Defendants that the grant of an interim injunction would effectively amount to granting final relief.

49. Ordinarily, the Court should refrain from granting interim relief in such terms as would amount to granting final relief at an interim stage when the matter is yet to be adjudicated, after appraisal of the evidence that may be adduced by the parties. However, it cannot be said that it is an immutable rule of law that such interim relief can never be granted.

50. Where a strong *prima facie* case of the present nature is made out and the refusal to grant interim relief would amount to non-suiting the Plaintiff at the threshold and the injury likely to be suffered by the Plaintiff due to the refusal of the interim relief is such that it cannot be compensated at a later stage even if the Court were to eventually decree the suit, in such rare cases, the Court would be justified in granting interim relief which partakes the character of final relief.

51. A useful reference in this context can be made to the judgment of the Supreme Court in the case of **Deoraj Vs State of Maharashtra & Ors,**<sup>7</sup> wherein the following observations were made:

“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case— of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice

---

7 (2004) 4 SCC 697.

being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent.”

(emphasis supplied)

52. It is true, the aforesaid principles enunciated in the case of **Deoraj (Supra)** may not have universal application. One additional fact or absence thereof may make a world of difference. However in the facts of the case at hand, in the considered view of this Court, a very strong *prima case* for the grant of interim relief which has the trappings of the final relief is made out. In the event of refusal to grant an injunction restraining the Defendants from causing obstruction to the laying of the underground cable, the loss that would be occasioned to the Plaintiff would be plainly irreparable. At the same time, to balance the equities, appropriate conditions can be imposed so as to facilitate the moulding of reliefs at the final decision of the suit. If eventually the Court come to the conclusion that, the Plaintiff was not entitled to lay the cable through the disputed stretch of land, the Court ought to be in a position to adequately compensate the Defendants.

53. It would thus be in the fitness of things to direct that the underground cable be laid strictly in accordance with the permissions

granted by the concerned Authorities and by resorting to HDD (horizontal directional drilling) boring method with the minimum possible damage to the land underneath which the cable is to be laid, and direct the Plaintiff to deposit an amount of Rs.20,00,000/- before the trial Court, by way of security for the due payment of compensation which the Civil Court may order the Plaintiff to pay to the Defendants, if ultimately the Plaintiff fails.

**54.** Hence, the following order:

**: O R D E R :**

- (i) The Petition stands allowed.
- (ii) The impugned order dated 30<sup>th</sup> August 2025 as well as the order dated 12<sup>th</sup> July 2024 passed by the learned Civil Judge, rejecting the Application for temporary injunction stands quashed and set aside.
- (iii) The application for temporary injunction (Exhibit “5”) stands allowed in terms of prayer clause (a) subject to the following conditions:
  - (a) The work of laying underground cable shall be carried out in scrupulous compliance with the conditions subject to which the permissions have been granted by the concerned Authorities and by following the HDD (horizontal directional drilling) boring method, causing minimum possible damage to the land beneath which the cable is proposed to be laid.

- (b) The Plaintiff shall deposit a sum of Rs.20,00,000/- before the trial Court by way of security for the compensation which the trial Court may award to the Defendants in the event the Plaintiff fails.
- (c) The trial Court shall invest the said amount of Rs.20,00,000/- in an interest bearing account and the said amount shall abide the final outcome of the suit.
- (d) By way of abundant caution, it is clarified that the consideration was confined to the entitlement of the Plaintiff for temporary injunction and any of the observations hereinabove shall not influence the final adjudication of the suit.
- (e) In the circumstances, there shall be no order as to costs.
- (f) Rule is made absolute to the aforesaid extent.

[N. J. JAMADAR, J.]