

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.10238 OF 2014

Minabai w/o Popat Rane (Wani),
Age 56 years, Occu.Agri.,
R/o Nijampur, Taluka Sakri,
District Dhule, through G.P.A.
Holder Popat Rane

..Petitioner
(Orig.Defendant)

Versus

Gajanan s/o Manik Thorat,
Age 71 years, Occu.Agri.,
R/o Nijampur, Taluka Sakri,
District Dhule

..Respondent
(Orig.Plaintiff)

Mr A.A.Khande, Advocate h/f Mr A.M.Gholap, Advocate for petitioner

CORAM : N.W. SAMBRE, J.

DATE : 10th March 2015

PER COURT

1. Heard learned Counsel for the petitioner-defendant.
2. The petitioner has questioned the legality and validity of the order dated 23rd August 2013 passed by the Court of learned District Judge, Dhule below Exh.5 in Regular Civil Appeal No.97/2013, an application seeking stay to the judgment and decree passed in Regular Civil Suit No.28/2007, on 11th July 2013.
3. By the order dated 11th July 2013, passed in above referred suit, the trial Court has directed the petitioner-defendant to make good the loss of the plaintiff by constructing wall and in alternate, pay an amount of Rs.29,000/-.

4. Learned lower appellate Court passed an order directing the petitioner to deposit an amount of Rs.15,000/- and has granted stay to the judgment and decree passed by the trial Court.

5. In compliance thereof, the petitioner has deposited an amount of Rs.15,000/- on 23rd September 2013.

6. While questioning the legality of the said order, learned Counsel for the petitioner would urge that the learned lower appellate Court has lost sight of the fact that the trial Court in absence of prayer has decreed the suit. He would further urge that the order of imposing condition of making payment of Rs.15,000/- is also unreasonable, as the decree was not a money decree but for recovery of cost of construction of wall.

7. Having considered the contention of the petitioner-defendant, it is required to be noted that the learned trial Court has ordered payment of costs of Rs.29,000/- towards the construction of wall by the defendant to plaintiff. Against that order, while considering the prayer for stay, the learned lower appellate Court has ordered the petitioner-defendant to deposit an amount of Rs.15,000/-, which cannot be termed as unreasonable condition.

8. Apart from this, it is required to be noted that the petitioner has already complied with the order impugned by depositing the amount.

9. In view thereof, no case for interference is made out. Writ Petition being devoid of merits, stands rejected.

(N.W. SAMBRE, J.)

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