

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3818 OF 2014

Shri. Dashrath Bhimrao Chabukswar

.. Petitioner

Versus

Shri. Prakash Dashrath Chabukswar

.. Respondent

Mr. Shrishail Sakhare, Advocate for the Petitioner.

Mr. Saurabh Butala, Advocate for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 05th JANUARY, 2015

PC.

1. The order dated 13.01.2014 passed by the learned Joint Civil Judge Junior Division, Solapur by which order the application No.12 filed by the Respondent herein came to be allowed is taken exception to by way of the above Petition. The Petitioner is the original Plaintiff who has filed the suit in question being Regular Civil Suit No.1879 of 2012 for permanent injunction. In the said suit, the Respondent herein has filed a counterclaim for a permanent injunction so as not to disturb the Respondents-Defendants possession in respect of the two rooms which are in his occupation. The Respondent has filed an application for temporary injunction being Exh.21 which was heard along with application for temporary injunction Exh.5 filed by the Petitioner/Plaintiff. By order dated 21.02.2013 passed by the learned Civil Judge Junior Division, Solapur

application Exh.21 came to be partly allowed and the Plaintiff i.e. Petitioner herein was directed to reconnect the electricity connection in respect of two rooms which are in occupation of the Defendant pending the suit. The Respondent has filed Civil Misc. Application No.89 of 2013 invoking under Order 39 Rule 2A of the CPC though styled as an application under Section 12 of the Contempt of Courts Act. The said application is founded on the fact that the Plaintiff i.e. the Petitioner herein has not complied with the said order dated 21st February, 2013 directing the Defendant to reconnect the electricity supply. The Trial Court in view of the allegation made against the Plaintiff of non-compliance of the said order dated 21st February, 2013 in respect of reconnection of the electricity to the said two rooms by the plaintiff deemed it fit to allow the application Exh.12 for appointment of the Court Commissioner to ascertain the said fact. In my view, the course of action adopted by the Trial Court cannot be found fault with as the Trial Court was exercising jurisdiction under Order 39 Rule 2A of the CPC and before exercising the said jurisdiction the Trial Court was within its right to elucidate the matter in controversy. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ petition is accordingly, dismissed.

[R.M. SAVANT, J]