

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8091 OF 2015**

Shri Bhauso Aabaso Naikwadi
and Ors.

..Petitioners

Vs

Shri Babaso Basavant Naikwadi
and Ors

.. Respondents

Mr.Santosh S. Musale, Advocate for Petitioners.

Mr. Prashant Bhavake, Advocate for Respondents no.2 and 3.

Mr A.R.Motkari, A.G.P for Respondent no.4.

CORAM : R.G.KETKAR,J.

DATE : 17/12/2015

PC:

1. Heard Mr. Santosh Musale, learned counsel for the petitioners, Mr. Prashant Bhavake, learned counsel for respondents no.2 and 3 and Mr. A.R.Motkari, learned A.G.P for respondent no. 4 at length.

2. By this Petition under Article 227 of the Constitution of India, original defendants have challenged the Judgment and order dated 2.7.2015 passed by learned District Judge-4, Kolhapur in Misc. Civil Application No.251 of 2013. By that order, the learned District Judge rejected Review Application filed by the defendants against the order dated 18.5.2013 passed in Misc. Civil Appeal No.53 of 2013 and Misc. Civil Appeal No. 71 of 2013. By order dated 18.5.2013, the learned District Judge disposed of

Misc. Appeal No. 71 of 2013 and allowed Misc. Civil Appeal No.53 of 2013. The learned District Judge set aside order dated 26.2.2012 passed by the learned Judge below Exh.5 and rejected the application made by the original plaintiffs for temporary injunction. The learned District Judge directed original plaintiffs to go on depositing Rs.1000/- per month in the trial Court as the defendants are supplying water through pipeline to the land owned by the plaintiffs.

3. The matter was heard on 17.8.2015. After hearing the learned counsel for the petitioners, notice was issued to the respondents. In that order, the grievance made by the defendants' Advocate that after the order dated 18.5.2013 till date the plaintiffs did not deposit the amount at the rate of Rs.1000/- per month in the trial Court, was recorded and the notice of final disposal was issued.

4. Thereafter, the matter was heard on 28.10.2015. In that order, it is recorded that the plaintiffs will approach the trial Court for depositing the amount at the rate of Rs.1000/- per month and the trial Court was directed to permit such deposit without prejudice to the rights and contentions of the parties in the above petition.

5. Learned counsel appearing for the parties state that the matter is listed today before the trial Court for passing order. Mr

Bhavake states that the plaintiffs are ready and willing to deposit Rs.1000/- per month in the trial Court as per the order dated 18.5.2013. Upon taking instructions from the plaintiffs and their instructing Advocate, he further states that the plaintiffs are also ready and willing to deposit the value of 1/4th share of crop cultivated by the plaintiffs in their land. This should, however, be subject to the defendants establishing the practice as recorded in paragraph 6 of the order dated 2.7.2015. In paragraph 6, it is recorded that supply of water to sugarcane is on the basis of giving 1/4th share of crop harvested to the sugar factory to the person supplying water. Mr Bhavake states that the defendants have to first establish this practice and also to establish that the plaintiffs are cultivating sugarcane crop in the land. He undertakes that if the defendants succeed in establishing these facts, the plaintiffs before filing appeal in the District Court will deposit the value of 1/4th share of crop in the trial Court.

6. In view thereof, by consent of the petitioners and respondents no.1 to 3, the impugned order is modified as under.

(i) The plaintiffs will go on depositing Rs.1000/- in the trial Court as per the order dated 18.5.2013.

(ii) In the event of the defendants establishing their supply of water to the plaintiffs as also practice of paying the value of 1/4th share of crop, the plaintiffs will deposit that amount in the

trial Court after the suit is decided. In case it is decided against the plaintiffs before filing appeal in the District Court, they will deposit the said amount.

(iii) Statement to that effect made by Mr. Bhavake is accepted in the form of undertaking.

(iv) Petition is disposed of in aforesaid terms. It is needless to state that the parties will lead evidence on this aspect apart from any other evidence.

(R.G.KETKAR, J.)