

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3236 OF 2015

Vitthal M. Desale

.. Petitioner

vs.

Maharashtra Government
through District Collector,
Nashik and ors.

.. Respondents

Mr. M.M. Sathaye for the Petitioner.

Mr. A.R. Metkari, AGP for Respondent Nos.1 to 4.

CORAM : M. S. SONAK, J.

DATE : 7 April, 2015.

P.C. :-

- 1] Not on board. Upon production, taken on board.
- 2] The order impugned in this petition states that the plaintiff's suit is not maintainable for want of jurisdiction. The order records that the suit is barred by the provision of Section 26 of Mamletdars Court Act, 1906.
- 3] Such an order answers the definition of a decree under Section 2(2) of the Code of Civil Procedure, 1908 (CPC), because in effect the same amounts to rejection of the plaint under Order 7 Rule 11(d) of the CPC.
- 4] In view of the aforesaid, there is no question of entertaining the present petition. The petitioner shall, however, have the liberty

to institute an appeal against the impugned order before the appropriate Court. In case, the appeal is instituted within a period of three weeks from today, then the petitioner shall be entitled to contend that the period spent in this Court, was spent *bona fide* for the purposes of seeking the recourse against the impugned order.

5] The learned counsel for the petitioner points out that the learned Civil Judge had granted a stay upon the impugned order till 7 April 2015. The impugned order states that the suit is not maintainable for want of jurisdiction. There is no question of grant of any stay in so far as such orders are concerned. This is not a case where the learned Civil Judge, after coming to the conclusion that he has no jurisdiction in the matter, merely extended interim relief, if any, which was in operation, whilst the suit was pending. Accordingly, the so called stay order granted has virtually no meaning and same ought not to have been granted.

6] The learned counsel for the petitioner, however, points out that on 19 August 2014, an interim order had been made restraining the defendant Nos.6 and 7, who are impleaded as the respondent Nos.6 and 7 in the present petition, from acting on the notice dated 11 August 2014. The learned counsel for the petitioner, on basis of

instructions from the petitioner, solemnly states that such order had been extended upto the time the impugned order dated 20 February 2015 was made. The learned counsel requests that such interim order be extended for a period of four weeks from today.

7] The request is reasonable, accordingly, the interim order made on 19 August 2014 is extended for a period of four weeks from today. It is, however, made clear that this Court has not examined the merits of the matter and therefore, if any motion is made for grant or extension of interim relief before the Appeal Court, the same may be considered on its own merits completely uninfluenced by the circumstance that the interim order was granted on 19 August 2014 and further the same was extended by this Court for a limited period.

8] With the aforesaid observations, the present petition is dismissed. There shall be no order as to costs.

9] All parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)