

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7429 OF 2015**

Sanjay Vijay Kumbhar

..Petitioner

Vs.

Shivaji Kashinath Asabe

..Respondent

Mr. A. A. Joshi for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 27th OCTOBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 7-3-2015 passed by the Learned District Judge-1, Pandharpur, by which order, the Appeal filed by the Petitioner i.e. Misc Civil Appeal No.18 of 2013 came to be dismissed and resultantly the order dated 18-11-2013 passed by the Learned Civil Judge Junior Division Pandharpur, rejecting the application for temporary injunction filed by the Petitioner / Plaintiff came to be confirmed.

2 The Suit in question has been filed by the Petitioner / Plaintiff for specific performance of the agreement dated 18-7-2000. The said agreement contemplates a Sale Deed being executed in favour of the Plaintiff within 11 months. The said agreement was succeeded by another agreement dated 16-6-2001 by which the period was extended for a further period of 11 months and lastly by the third agreement dated 15-2-2002, it was provided that the sale deed would be executed by the Defendant after the property is partitioned.

3 The Plaintiff as indicated above has filed the Suit in question for specific performance of the said agreement dated 18-7-2000. In the said Suit, the Plaintiff filed an application for temporary injunction. The Trial Court rejected the application on the ground that though by third agreement it was decided that the sale deed would be executed after the property is partitioned, the Plaintiff has taken 10 years to file the Suit in question and is therefore not entitled to the relief sought.

4 The Plaintiffs aggrieved by the order passed by the Trial Court rejecting the application for temporary injunction carried the matter in Appeal. The Lower Appellate Court on a re-appreciation of the material on record did not deem it appropriate to interfere with the order passed by the Trial Court. The Lower Appellate Court reiterated the finding of the Trial Court that the Plaintiff has filed the Suit in question after a period of 10 years of the third agreement. The Lower Appellate court also held that the Plaintiff was not in possession of the Suit property whereas the Defendant No.3 was, which fact is proved by the material placed on record by the Defendant.

5 In my view, having regard to the concurrent orders passed by the Courts below, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]