

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10730 OF 2004

Shri Gajanan D. Bhalerao	..	Petitioner.
V/s.		
Shri Shankar S. Adole		
& Others	..	Respondents.

Mr. Shriram S.Kulkarni, for the Petitioner.

CORAM: M.S.SONAK,J.

DATE : 27th MARCH, 2015.

P.C:-

This Petition challenges the order dated 31st August, 2004 passed by the 2nd Joint Civil Judge, Junior Division, Nashik.

2 The Petitioner is the original Defendant No.3 and Respondent No.1 is the original Plaintiff in Regular Civil Suit No.595 of 1996, seeking permanent injunction, restricting the present Petitioner and other Defendants in the suit, from obstructing the Respondent No.1- Plaintiff from carrying out construction in the suit property. The interim injunction, in the aforesaid terms was obtained by Respondent No.1-Plaintiff on 24th September, 1996 and on the basis of the same, it appears that the construction in question was also completed.

3 On 22nd January, 2004, the Respondent No.1- Plaintiff filed pursis before the Trial Court, stating that the purpose of filing of the suit is fulfilled, as the construction activity by the Respondent No.1- Plaintiff is

completed. By the said pursis, the Respondent No.1- Plaintiff applied for conditional leave to withdraw the suit, the condition being leave to apply for specific performance if required in the future.

4 The Petitioner herein filed a detailed response on 31st January, 2004, inter alia, opposing grant of conditional leave to withdraw the suit. In the said reply, the Petitioner also made a specific prayer for restitution, on the basis of the construction in question had been put up on the suit plot on the basis of interim orders obtained by Respondent No.1-Plaintiff in the suit, and now that the suit was proposed to be abandoned, restitution ought to follow.

5 The learned Civil Judge, Junior Division, Nashik by the impugned order has permitted Respondent No.1- Plaintiff to withdraw the suit with liberty to institute the suit for specific performance, if the need arises in the future. However, there is no serious consideration of the Petitioner's relief seeking restitution.

6 In the peculiar facts and the circumstances of the case, the learned Civil Judge, Junior Division, Nashik ought not to have decided the issue of leave to abandon the proceedings whether conditional or not de hors from the Petitioner's plea seeking restitution. In fact, there is no consideration, in so far as Petitioner's plea seeking restitution is concerned.

7 In the aforesaid circumstances, it would be appropriate if the impugned order dated 31st August, 2004 is set aside, the suit is restored to the file of the learned Single Judge, Junior Division, Nashik with directions to consider the application of Respondent No.1- Plaintiff made

on 22nd January, 2004 and the Petitioner's reply/ application for restitution made on 31st January, 2004, in accordance with law and on its own merits. It is ordered accordingly.

8 It is made clear that this Court has not examined the merits of the matter and it will be open to the learned Civil Judge, Junior Judge to decide the aforesaid in accordance with law and on its own merits.

9 Registry to communicate the writ of this Court along with authenticated copy of this judgment/ order to the concerned Civil Judge, Junior Division, Nashik and thereupon, the concerned Civil Judge, Junior Division, Nashik to issue notice to the parties for appearances in the matter.

10 Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M.S.SONAK,J.)