

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2487 OF 2014

(VIKRAM KRUSHNARAO RAJURKAR..vs... DR.SADANAND MUKUND BHUSARI & 2 OTH.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 01, 2015.

Heard Shri S.S.Sarda, learned advocate for the petitioner and Shri A.M.Ghare, learned advocate for the respondent Nos. 1 and 2.

2. The petitioner/ plaintiff has filed this petition challenging the order passed by the learned District Judge allowing the appeal filed by the respondent Nos.1 and 2 and setting aside the order passed by the learned trial Judge. The learned trial Judge had granted the temporary injunction restraining the respondent Nos. 1 and 2 from proceeding with the construction.

3. Shri Sarda, learned advocate submits that the civil suit is fixed for recording of evidence and prays that the interim order passed by this Court may be continued till the disposal of the civil suit. It is submitted that if such order is passed, no prejudice will be caused to the respondent Nos. 1 and 2.

4. After hearing the learned advocates for the respective parties and examining the facts of the case, as recorded in the impugned order, in my view, the prayer as made on behalf of the petitioner cannot be granted.

It is recorded in paragraph No.14 of the impugned order that the construction has reached up to the slab of second floor and only outer plaster of newly constructed building was required to be effected. This Court, while issuing notice, by the order dated 13th May, 2014 permitted the respondents No. 1 and 2 to complete the plastering work, however, restrained them from undertaking any further construction. The case of the respondent Nos. 1 and 2 is that they are undertaking the construction on their own plot as per the plan sanctioned by the Municipal Corporation, Akola. Unless the petitioner proves this case, in my view, it would not be proper to grant temporary injunction in favour of the petitioner restraining the respondent Nos. 1 and 2 from undertaking the construction. The balance of convenience lies in favour of the respondent Nos. 1 and 2, *prima-facie* case also is in favour of the respondent Nos. 1 and 2 and if the temporary injunction, as prayed for by the petitioner is granted, the respondent Nos. 1 and 2 would suffer irreparable loss.

5. The learned District Judge has properly appreciated the facts of the case and has rightly rejected the prayer of the petitioner for grant of temporary injunction. I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE