

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

A.O. No.114 of 2014
(Chanchal Gopaldas Bhaiya .vs. Shankar Sakharamji Pochampalliwar)

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

Court's or Judge's orders.

Mr.B.N.Mohta, Adv. for the appellant.
 Mr.A.S.Dhore, Adv. for respondent no.1.
 Mrs.Kirti Satpute, Adv. for respondent no.2.

CORAM : A.P.BHANGALE, J.

DATE : 13.7.2015.

Heard.

Learned Counsel for the appellant submits that the appellant is aggrieved by the order passed below Exh.5 in Special Civil Suit No.367 of 2013 by the learned 3rd Joint Civil Judge (Sr.Dn.), Nagpur, who rejected the application for interim injunction whereby the plaintiff had sought relief against the defendant seeking to restrain him from alienating the suit property pending disposal of the suit. The learned trial Judge addressed himself to the routine questions such as : whether the plaintiff has a prima facie case ? Whether the balance of convenience lies in favour of the plaintiff and whether the plaintiff will suffer irreparable injury if temporary injunction is refused. Learned Judge ultimately refused to grant interim injunction. Taking disadvantage of this refusal, it

alleged that the defendant created third party interest in favour of respondent no.2, on whose behalf learned Counsel Mrs.Kirti Satpute appears. She is seeking time to file reply.

In my opinion, the learned trial Judge, instead of addressing himself on the technical questions, could have taken care to preserve the suit property during pendency of the suit so that irreversible situation cannot be created by the defendant. If temporary injunctions is refused in such cases then irreparable injury would certainly result to the plaintiff if defendant part with the suit property in favour of third party. In such cases, therefore, prima facie, balance of convenience is in favour of the plaintiff and even the plaintiff has prima facie case to save the property from changing its hands during pendency of the suit.

Be that as it may, I am inclined to protect the property from changing its hands further and restrain the respondents herein from creating any third party interest pending disposal of the suit. Hence, the order dt.11.7.2014 passed by the 3rd Joint Civil Judge (Sr.Dn.), Nagpur below Exh.5 in Special Civil Suit No.367 of 2013 is set aside. The respondents herein are restrained from creating any third party interest in respect of the suit property pending disposal of the suit.

The trial Court is requested to hear the suit as expeditiously as possible and to dispose of the same

on merits according to law.

With the above observations and directions, the appeal is disposed of accordingly.

JUDGE

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