

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

APPEAL AGAINST ORDER NO.116 OF 2014

(Smt. Pranjali w/o Gaurav Thakur ..vs.. Ravindra s/o Gulabrao Lakudkar)

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 : 10-02-2015

Heard Shri Amit Khare, learned Advocate for the
appellant.

2. None appears for the respondent.

3. The appeal against the order is filed by the original defendant challenging the order passed by the learned trial Judge on the application filed by the respondent/original plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

4. The respondent/plaintiff has filed the suit praying for decree for specific performance. According to the respondent/plaintiff, he is in possession of the suit property. The respondent/plaintiff filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure praying for temporary injunction restraining the appellant/defendant from creating any third party interest in the suit property and from disturbing the possession of the respondent/plaintiff over the suit

property, till the disposal of the civil suit.

The learned trial Judge, by the impugned order, has recorded that the respondent/plaintiff has prima facie case in his favour, however the respondent/plaintiff has failed to prove that the balance of convenience lies in his favour and that he will suffer irreparable loss and injury if the temporary injunction as prayed for is not granted. The learned trial Judge has rejected the application, however directed the appellant/defendant to file an undertaking to the effect that she will not sell or alienate the suit property and will not create third party interest in the suit property, till the disposal of the suit or until further orders.

The appellant/defendant being aggrieved by the directions have filed this appeal.

5. In my view, the directions given by the learned trial Judge to the appellant/defendant to file the undertaking run contrary to his findings and the conclusions while rejecting the temporary injunction application. I find that the impugned order is passed by the learned trial Judge without application of judicious mind. Therefore, the impugned order is set aside. The matter is remitted to the trial Court for deciding the application afresh by granting hearing to the respective parties.

6. The appeal is allowed in the above terms. In the

circumstances, the parties to bear their own costs.

7. Shri Amit Khare, learned Advocate for the appellant submits that pursuant to the order passed by the trial Court, the appellant/defendant has filed an undertaking before the trial Court. The undertaking came to be filed in view of the order passed by the trial Court on 20-8-2014. The order having been set aside, the undertaking becomes *non est* and it should be treated accordingly.

JUDGE

pma