

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

APPEAL AGAINST ORDER NO.131 OF 2014

NAKTU S/O AMBAR PATLE

V/S

BHOJRAJ S/O NAKTU PATLE

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

Court's or Judge's order

**Shri I.N. Choudhari, Counsel for the appellant.
Shri Mahesh Masodkar, Counsel for the respondent.**

**CORAM : A.P. BHANGALE, J.
DATE : JUNE 9, 2015.**

Heard.

This appeal is against order dated 28.7.2014 passed by the learned Civil Judge Senior Division, Gondia in Special Civil Suit No.33 of 2014 whereby the application for grant of temporary injunction was refused and application Exh.5 was rejected. *Prima facie*, a perversity appears in the concluding paragraph of the order impugned by the learned trial Judge, which reads thus :

“The balance of convenience tilts in favour of plaintiff. It is plaintiff who would suffer irreparable loss, if temporary injunction as claimed for is refused. I answer point No.1 to 3 in negative. I proceed to pass following

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order.

ORDER

- 1. Application Exh.5 is rejected.*
- 2. Costs to follow in cause.”*

This *prima facie* appears the perversity in the order impugned despite above observations when the application for grant of temporary injunction was made. The learned trial Judge went on to reject application Exh.5 may be due to non-application of mind.

The learned counsel for the respondent supports the order impugned on the ground that the points determined by the learned trial Judge are just and proper and hence the same do not call for any interference.

Having considered the submissions made by the rival parties, be that as it may, while rejecting the application for grant of temporary injunction, the learned trial Judge has not applied his own mind. He should have applied his own mind. It is necessary for the learned trial Judge to avoid such errors while deciding the matters which can cause serious prejudice either of the parties. As such, since the order passed below application Exh.5 by the learned trial Judge needs fresh consideration, the same is to be set aside.

In view of above, the order impugned passed below application Exh.5 in Special Civil Suit No.33 of 2014 is set aside. The learned trial Judge is directed to consider application Exh.5 afresh and pass well reasoned and sound order. The parties to appear before the trial Court on 27.7.2015.

The appeal is, therefore allowed in aforesaid terms. There shall be no order as to costs.

JUDGE

!! BRW !!

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