

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

905 WRIT PETITION NO. 7850 OF 2016

SHUBHAM GOVIND BANSUDE AND ANOTHER
VERSUS
FULABAI PILYABAI BHAUSAHEB BANSUDE AND ANOTHER

...
Advocate for Petitioners : Kendre N.D.
Advocate for Respondents 1 & 2 : Dube Anjali (Bajpai)

...
CORAM : T.V. NALAWADE, J.
DATED : 26th August, 2016.

ORDER :

1) The petition is filed to challenge the order made on Exh. 109 in Regular Civil Suit No. 328/2015 by the learned 2nd Jt. Civil Judge, Junior Division, Latur. Further prayer is made for granting relief of injunction by allowing the application filed at Exh. 48 filed in the same suit by the present petitioner. Heard both the sides.

2) The aforesaid suit is filed for relief of perpetual and mandatory injunction. Objection is taken in application at Exh. 20 under section 9(A) and Order 7, Rule 10 of Civil Procedure Code. There is objection that necessary Court fee is not paid in view of the relief claimed in the suit. This application was rejected by the Trial Court and the order was challenged by filing Writ Petition No. 11559/2015 by original defendant. The order of

Trial Court is set aside by this Court and the matter is remanded back for considering, Exh. 20, afresh.

3) The application at Exh. 48 is filed for relief of temporary injunction under the provisions of Order 39, Rule 1 and 2 of Civil Procedure Code and by taking the relief, the plaintiff wants to lift goods worth in crores of rupees from warehouse and cold storage of the defendant. The application at Exh. 109 was filed for hearing the application at Exh. 48 forthwith. This application was heard and the Trial Court has held that it is desirable that application at Exh. 20 is decided first.

4) The submissions made and the record show that order of statusquo is already made by the Trial Court on the interim relief application. This order was not challenged by anybody and if nobody has grievance in respect of that order.

5) The learned counsel for petitioner took this Court through aforesaid provision of section 9(A) (Maharashtra Amendment) of Civil Procedure Code and submitted that even when the objection is not decided, the Court has the power to grant interim relief. There is no dispute over this proposition, but

the wording shows that it is a discretionary power. The Trial Court has observed that in view of the previous order made by this Court for deciding Exh. 20 afresh and in view of the facts and circumstances of the case, it is desirable to decide application Exh. 20, first. It can be said that plaintiff is interested only in getting order in his favour due to which he can collect goods worth crores of rupees. After getting that order there is clear possibility that he may not prosecute the suit. There is one circumstance against him that he has filed one more suit like Special Civil Suit No. 328/2016 and this time, he prayed for relief of injunction only, not for mandatory injunction. It appears that some order is obtained in that suit also. This conduct of plaintiff shows that he is trying to obtain orders behind the back of defendants by hook or crook and he is trying to avoid the payment of court fees in respect of the relief which he wants. In favour of such person, discretion can never be used. This Court holds that the Trial Court has not committed any error in holding that application at Exh. 20 needs to be decided first. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/