

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

51 WRIT PETITION NO. 8549 OF 2014

DNYANESHWAR BABURAO GIDHANE
VERSUS
SHAIKH CHAND SHAIKH MAHMOOD

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Advocate for Petitioner : Mr. D. P. Palodkar
AGP for Respondent/sole : Mr. M. M. Chaudhari

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CORAM : V. K. JADHAV, J.

DATED : 18th JANUARY, 2016

PER COURT :-

1. Petitioner is the original defendant. Respondent sole had instituted R.C.S. No. 181 of 2006 for a decree of perpetual injunction against the present petitioner. Learned Civil Judge Junior Division, Paithan, by judgment and order dated 29.05.2013 in R.C.S. No. 181 of 2006, decreed the suit and thereby restrained the petitioner/defendant from causing obstruction to the peaceful possession of respondent/plaintiff over the suit property. Being aggrieved by the same, the present petitioner has preferred R.C.A. No. 163 of 2013 which is pending before the District Court, Aurangabad. During pendency of appeal, the petitioner has filed application Exh. 7 for staying the effect, operation and implementation of the judgment and decree impugned in the appeal. Learned Adhoc District Judge-2, Aurangabad, by the impugned order dated 05.05.2014 passed below Exh. 7 in R.C.A. No. 163 of 2013, rejected the said application.

2. The impugned order came to be passed on 05.05.2014, though R.C.A. was filed in the year 2013. Thus, till this date, the decree of perpetual injunction passed against petitioner/defendant is in force and the same is not stayed by the appellate court. In view of this, no purpose would be served by considering whether order passed below Exh. 7 by the lower appellate court is correct, proper and legal. This writ petition can be disposed of with certain directions to the first appellate court to dispose of Regular Civil appeal within certain period. Hence the following order :

ORDER

- I. The First Appellate Court is hereby directed to dispose of Regular Civil Appeal No. 163 of 2013 within a period of six (06) months from today.
- II. The writ petition is accordingly disposed of. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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