

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

3 WRIT PETITION NO. 9761 OF 2015

**VITTHAL GOVIND GAIKWAD AND OTHERS
VERSUS
SHRIKANT CHANDRASHEKHAR HIREMATH**

...

**Advocate for Petitioners : Mr. Sontakke Gajanan K &
Sontakke P. G.**

**Advocate for Respondent : Mr. Mukul Kulkarni h/for
Mr. Anil S. Shivpuje**

CORAM : V. K. JADHAV, J.

DATE : 27th January, 2016

PER COURT :

1. Heard.
2. Issue notice to the respondent sole. Learned counsel for respondent waives notice.
3. Heard finally with the consent of the parties at admission stage.
4. The petitioners/orig. defendants have challenged the order passed by the Adhoc District Judge-1, Latur dated 06.07.2015 in MCA No.21/2015.
5. The respondents /original plaintiffs instituted RCS No.108/2015 for perpetual injunction in respect of landed property. The petitioners/defendants, though

appeared in the suit, have not filed written statement and even no say is filed to the application at Exh.5 submitted for issuance of temporary injunction.

6. Learned Judge of the trial Court, by order dated 12.03.2015, granted application at Exh.5 with observation that the petitioners/defendants have failed to file written statement inspite of sufficient opportunity was granted and prima facie case was made out by the respondents/plaintiffs.

7. Learned counsel for the petitioners submits that the learned Adhoc District Judge-1, Latur, in its impugned order, has observed that no sufficient time was granted to the appellants therein(petitioners herein) for presenting their case before the trial Court at the time of hearing of injunction application. Learned counsel submits that instead of remanding the matter to the trial Court, the learned Adhoc District Judge has dismissed the MCA No.21/2015.

8. Learned counsel for the respondents/plaintiffs submits that the learned Adhoc District Judge No.1, in its impugned order, granted opportunity to the petitioners/defendants to file application under Order 39

Rule 4 of the Civil Procedure Code. The respondents plaintiffs are not challenging the said liberty granted to the defendants. In view of this statement, following order is passed:

O R D E R

- i. The petitioners/defendants are at liberty to file application under Order 39 Rule 4 of the Civil Procedure Code and the Trial Court may decide the same on merits, in accordance with law.
- ii. The application under Order 39 Rule 4 if filed by the defendants without filing written statement on record, the respondents/plaintiffs are at liberty to raise objection to that extent.
- iii. Writ petition is disposed of accordingly. No order as to costs.

(V. K. JADHAV, J.)

JPC