

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

919 WRIT PETITION NO. 12000 OF 2016

REVATABAI SHANKARRAO KENDRE AND OTHERS
VERSUS
MOHD SALEEM HAJI ABDUL RAZZAK AND ANOTHER

...
Advocate for Petitioners : Patil Milind M. (Beedkar)

...
CORAM : T.V. NALAWADE, J.
DATED : 20th December, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 32 in Regular Civil Appeal No. 110/2012 presently pending in the Court of District Judge-4, Nanded. Heard the learned counsel for petitioners.

2. The suit was filed for relief of specific performance of contract of sale in favour of plaintiff by the respondent in the year 2003. The suit came to be decreed on 5.2.2005 and the appeal filed in the year 2012 has come up for final hearing. In the appeal by filing aforesaid application, defendant has contended that hardship will be caused to the defendant if the decree of specific performance is granted and it is the only property with the plaintiff and it is the source of income to the plaintiff.

3. The District Court has observed that this contention can be considered along with the appeal itself meaning thereby that this contention can be considered at the time of decision of the appeal. This Court has carefully gone through the record which includes the copy of judgment delivered by the Trial Court. As a routine course, the Trial Court has framed issue with regard to the necessity to use discretionary power by the Court and when such issue is there, the contention of aforesaid nature is required to be considered. When the District Court has promised to consider this contention by making order of aforesaid nature, this Court holds that it is not necessary to interfere in the order made by the District Court. The petition stands dismissed.

[T.V. NALAWADE, J.]

SSC/