

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

924 WRIT PETITION NO. 10359 OF 2016
WITH WP/10360/2016

VITTHAL PRAHLAD MAHAJAN
VERSUS
GRAMPANCHAYAT KHANDALE THRO SARPANCH AND
OTHERS

Shri. Manoj Shinde, Advocate, for petitioner.

Shri. J.M. Murkute, Advocate, for respondent No.1.

Shri. S.K. Tambe, Assistant Government Pleader, for
respondent No.2.

Shri. M.K. Goyanka, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 18 NOVEMBER 2016

ORDER:

1) Both the petitions are filed to challenge the order made on applications filed for temporary injunction by the plaintiffs in the suits which are pending in the Court of the Civil Judge, Senior Division, Bhusawal. Heard both the sides.

2) Learned counsel for the respondents submitted that when appeal under Order 43 Rule (1)(r) of the Civil Procedure Code is available, writ petition cannot be entertained and no order can be made in such petition.

3) The suits are filed by the petitioners for the relief of declaration and injunction. It appears that along with plaint applications were filed for relief of temporary injunction but no relief even of *ex parte* nature is granted in favour of the petitioners. Notice given by the defendant for removal of encroachment is challenged in the suit. Then during pendency of the application filed for temporary injunction, one more application for relief of injunction was filed. The trial Court has rejected the applications. When application is filed for relief of injunction it needs to be presumed that it is one under Order 39 (1), (2) of the Civil Procedure Code. Learned counsel for the petitioners submitted that initially application for temporary injunction was filed and it was pending and so new application needs to be treated as application under section 151 of the C.P.C. This submission is not at all acceptable. Any application filed

for relief of injunction needs to be treated as application under Order 39 Rules (1) and (2) of the C.P.C. Any order made on such application either granting or refusing the relief needs to be challenged only by filing appeal under Order 43 of the Civil Procedure Code. Submission was made that even when there is other alternate and efficacious remedy available, this Court can entertain writ petition and this case is of that kind. This Court holds that it is not possible to entertain the petition when there is specific provision quoted above. In the result both the petitions stand dismissed. Learned counsel for the petitioners prayed for protection till filing of the appropriate proceeding. The relief is refused as the petition itself is not tenable.

Sd/-
(T.V. NALAWADE, J.)

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