

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

Writ Petition No.12316 of 2016

Krishna s/o Venkatrao Nemmaniwar. .. **Petitioner.**

Versus

The State of Maharashtra & Others. .. **Respondents.**

Shri. A.G. Godhamgaonkar, Advocate, for petitioner.

CORAM: T.V. NALAWADE, J.

DATE : 13 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by learned Civil Judge Senior Division Nanded on an application which was filed for dispensing with notice which is required under section 80 of the Civil Procedure Code. Heard learned counsel for the petitioner.

2) Learned counsel for the petitioner placed reliance on the observations made by the Apex Court in the following reported cases.

- (1) **AIR 2007 SC 113 (State of A.P. v. M/s Pioneer Builders);**
- (2) **AIR 2007 SC 1906 (Ms. Bajaj Hindustan Sugar & Industries Ltd. v. Balrampur Chini Mills Ltd.).**

There is no dispute over the propositions made by the Apex Court. This Court has gone through copy of the present plaint. Paragraph 5 of the plaint is as under :-

"5. That, suddenly the defendant No.2 on instigation of adversaries of the plaintiff and under political pressure ruling party workers who are on loggerhead with the plaintiff gave a notice to demolish some part in 2013. The plaintiff filed suit against it which matter is pending at appeal stage."

3) In view of these contentions made in the present suit, this Court asked learned counsel for the petitioner to show to this Court copy of plaint of the suit filed in the year 2013 and copy of show cause notice issued in the year 2013 for removal of the said encroachment. Learned counsel submitted that, today he is not having that record. This Court has formed the opinion that these documents are intentionally not produced on record and the purpose behind is to get some interim relief. Many a times such interim reliefs are granted. Fortunately this Court had time to go through the

record and find out that in past in the year 2013 suit was filed in respect of the action of the defendants of removal of encroachment. It appears that before filing of present petition one writ petition also was filed and in that writ petition this Court has given time of 15 days for taking appropriate steps. Said order also does not show that the reference was made to the previous suit, of the year 2013. In view of these circumstances Court holds that it is not possible to entertain the petition and it needs to be dismissed without issuing notice to the other side. The petition is dismissed.

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

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