

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO. 275 OF 2016**

Mr. Shantinath Bapuso Herwade

..Applicant

Vs

1. Executive Engineer, MSEDCL,  
Sangli and Ors.

.. Respondents

Ms. Kranti Anand i/b Jitendra M. Mulik, Advocate for Applicant.  
Mr Rajesh Pawar, A.G.P. for respondent no.3 State.  
Mr. Manoj A. Patil, Advocate for respondent no.4 .

|                |               |
|----------------|---------------|
| CORAM :        | R.G.KETKAR,J. |
| RESERVED ON :  | 05/05/2016    |
| PRONOUNCED ON: | 07/06/2016.   |

**PC:**

1. Heard Ms Kranti Anand, learned counsel for the applicant, Mr.Rajesh Pawar, learned A.G.P for respondent no.3, Mr. Manoj Patil, learned counsel for respondent no.4 at length. On the motion made by Ms. Anand, rest of the respondents are deleted as respondents no. 3 and 4 are the only contesting respondents. Amendment shall be carried out forthwith. Rule. Learned counsel for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and Application is taken up for final hearing.
2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has prayed for following reliefs.

(a) That this Hon'ble High Court may be pleased to direct

the respondent no. 4 to 11 that pending the hearing and final disposal of the Suit no. 348 of 2011, not to fetch water from the joint ownership pipeline of the applicant;

(b) That this Hon'ble Court may be pleased to suspend the licence of respondents no. 4 to 11 till the hearing and final disposal of the suit no. 348 of 2011 pending on the rank and files of learned Civil judge, Sr Dn., Sangli;

(c) That this Hon'ble Court may be pleased to direct the respondent no.1 to 3 suspend the licence of respondent no.4 to 11 for the illegal unauthorised distribution of the water supply to the gats (lands) which are not mentioned in the licence availed by the respondent no. 4 to 11;

(d) That this Hon'ble Court may be pleased to direct the respondent no.1 to 3 suspend the license of respondent no.4 to 11 for the illegal unauthorized distribution of the water supply to the gats (lands), which fall under the command area of the irrigation scheme viz. "Dhadak Yojana" carried out by Vasant Dada Shetkari Sahakari Sakhar karkhana Ltd, Sangli, Dudhgaon Dhadak for the areas which comes exclusively under Dhadak Yojana;"

3. Ms Anand submitted that lands bearing Gat Nos 1 to 999 are in the Command Area of Vasantdada Shetkari Sahakari Sakhar Karkhana Ltd, Sangli and under its "Dhadak" Irrigation Scheme, Dudhgaon. Defendants no. 4 to 11 have to obtain written consent of the plaintiff as also N.O.C. from Vasant Dada Karkhana and also the authorities implementing Dhadak Irrigation Scheme as per condition no.5 of licence dated 23.8.2010. Without obtaining N.O.C., defendants no. 4 to 11 have obtained licence which is liable to be suspended. She has taken me through the licence dated 23.8.2010, communication

dated 3.11.2010 of Subdivision Officer, Warna Irrigation Sub Division, Kudoli to the plaintiff under Right to Information Act, 2005 as also Government Resolution dated 21.11.2002 issued by Irrigation Department and in particular clauses 4(3), (3) (1), 4(6) in support of this submission. She also invited my attention to affidavit dated 6.7.2010 made by Rajnikant Babgonda Patil, Surendra Nabhiraj Aadmuthe, M.K.Ungare, Nrasgonda D.Patil as also communication dated 31.8.2010 addressed by Managing Director of Vasantdada Karkhana to the plaintiff and order dated 7.4.2016 passed by the learned trial Judge below Exhibit 96 in Regular civil Suit No.348 of 2010. She submitted that the learned trial Judge allowed the application at Exh.96 to the extent of observations and directions passed in the order dated 16.3.2015 by the learned District Judge-2 in Misc. Civil Appeal No.45 of 2011. She submitted that as the order dated 16.3.2015 is set aside in the companion writ petition, the order below Exhibit 96 also deserves to be set aside, thereby, directing the learned trial Judge to decide application Exh.96 afresh.

4. On the other hand, Mr. Patil supported the impugned order. He submitted that the plaintiff has not challenged the order dated 16.3.2015. The learned trial Judge had rejected the application Exhibit-5 on 30.10.2010. Aggrieved by that decision, the plaintiff preferred appeal which was allowed by the learned

District Judge on 16.3.2015. The plaintiff has not challenged the order dated 16.3.2015. In other words, the plaintiff is bound by order dated 16.3.2015. While rejecting the application Exh.96, the learned trial Judge has allowed the application Exh.96 to the extent of observations and directions contained in the order dated 16.3.2015. He further submitted that in any case the reliefs claimed in this application extracted herein above, cannot be granted.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also pursued the material on record.

6. By a separate order passed today in writ Petition (ST) No. 14069 of 2015, I have set aside the order dated 16.3.2015 and restored Misc. Civil Appeal No. 45 of 2011 to the file of the learned District Judge. Perusal of the order dated 7.4.2016 below Exhibit-96 shows that the learned trial Judge has allowed that application to the extent of observations and directions contained in the order dated 16.3.2015. Clause 1 and 2 of operative part of the order dated 7.4.2016 reads thus;

“1. Application at Exh.96 is allowed to the extent of observations and directions of Hon'ble district Judge-2 in Misc. Civil Appeal No.45 of 2011 dated 16.3.2015.

2. The defendant nos 4 to 11 to act upon as per order passed in Misc. Civil Appeal No.45 of 2011 dated 16.3.2015.”

7. As I have set aside the order dated 16.3.2015, order dated 7.4.2016 deserves to be set aside thereby restoring application Exhibit-96 to the trial Court for deciding it afresh. As I am remanding the matter, I deem it appropriate not to deal with the contentions raised in this petition, lest it may influence the lower court. Hence the following order.

(i) Order dated 7.4.2016 is set aside and the application Exhibit-96 is restored to the file of the learned trial Judge. The learned trial Judge will deal with the contentions recorded herein and all other contentions that may be available to the parties. All contentions of the parties on merits are expressly kept open.

(ii) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)