

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13050 OF 2016

Baban Mahadeo Nirmale	... Petitioner
v/s	
Dilip Prabhakar Dabade and others	... Respondents

Mr Nagesh Y. Chavan with Mr Nikhil Pawar for Petitioner.

CORAM : RAJESH G. KETKAR, J.

DATE : 22nd NOVEMBER, 2016.

P.C. :-

1. Not on board. At the request of Mr Chavan, learned counsel for Petitioner, taken up on production board.
2. Mr Chavan submitted that the Suit instituted by the Petitioner was dismissed by the learned Trial Judge on 20th September 2016. Plaintiff claims tenancy in respect of the suit property. Aggrieved by that decision, Plaintiff preferred an Appeal. During pendency of the Appeal, he took out application at Exh.7 for injunction restraining the Defendants from recovering possession of the suit property. By the impugned order, the learned District Judge has dismissed the Application.

3. Mr Chavan states that the Petitioner is in possession of the suit property. The Petitioner has not created third party interests, he will neither create third party interest in future. He further states that the Tahasildar, Miraj has issued notice to the Defendants – landlords to handover possession on 25th November 2016.

4. As the Suit instituted by the Plaintiff is dismissed, aggrieved by that decision, the Plaintiff has preferred substantive Appeal. Pending that Appeal, Application under Order 39, Rules 1, 2 of the Code of Civil Procedure is taken out. In view of Order 43, Rule 1(r), the Petitioner has an equally efficacious alternate statutory remedy of filing an Appeal from Order in this Court. Hence the Petition fails and is dismissed on the ground of maintainability. Liberty is reserved to the Petitioner to file Appeal from Order. It is made clear that I have not examined the merits of the order. Subject to the Petitioner neither creating third party interest nor parting with possession, he shall not be dispossessed from the suit premises till 2nd December 2016. It is made clear that no further extension will be granted. Order accordingly.

(RAJESH G. KETKAR, J.)