

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13702 OF 2016

Shubhangi Baburao Mirajkar
(Shubhangi Sandip Deshmane) ... Petitioner
Vs.
Baburao Krishna Mirajkar and others ... Respondents

Mr. Yashodeep Deshmukh i/b. Mr. Shailesh Chawan for Petitioner.
Mr. Mahindra Deshmukh i/b. Mr. Shivaji A. Masal for Respondents.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 23, 2016

P.C. :

Heard Mr. Yashodeep Deshmukh, learned Counsel for the petitioner and Mr. Mahindra Deshmukh, learned Counsel for the respondents at length. Rule. Mr. Mahindra Deshmukh waives service for respondents. In view of the narrow controversy raised in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 19.11.2016 passed by the learned Ad-hoc District Judge-1, Sangli in Miscellaneous Appeal No.120 of 2016. By that order, the learned District Judge partly allowed the appeal and substituted the judgment and order dated 13.05.2016 passed by the learned II Joint Civil Judge (Junior Division), Tasgaon below exhibit-5 in Regular Civil Suit No.51 of 2016 as under:

- “(a) The application for temporary injunction (Exh.5) in RCS No.51/2016 is hereby partly allowed.
- (b) Defendants are hereby restrained from causing any sort of obstruction to the residence of the plaintiff in the suit property at Sr.No.1(D) of the application till final disposal of the suit.

- (c) Prayer of the plaintiff in respect of doing business in the suit property at Sr.No.1(C) of the application stands rejected.
- (d) Defendants are hereby restrained for creating any third party interest in suit property till the decision of the suit.
- (e) Considering the relations of the parties and nature of the suit, the suit - RCS No.51/2016 is expedited and learned trial court shall decide the suit within six months from the date of the order.
- (f) The copy of the judgment be sent to the Lower Court.
- (g) Costs to be the costs in cause."

3. After arguing the Petition for quite some time, Mr. Mahindra Deshmukh, upon taking instructions, submits that the impugned order may be set aside and the Miscellaneous Civil Appeal may be restored to the file of the learned District Judge for deciding it afresh in the light of the judgment of the Apex Court in the case of **Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727**. Learned Counsel appearing for the parties submit that they will appear before the learned District Judge on 06.01.2017 and for that purpose, no fresh notice be issued to the parties.

4. Hence, by consent of the parties, following order:
- a. Impugned judgment and order dated 19.11.2016 passed by the learned Ad-hoc District Judge-1, Sangli in Miscellaneous Appeal No.120 of 2016 is quashed and set aside and Miscellaneous Civil Appeal No.120 of 2016 is restored to the file of the learned District Judge;
 - b. Parties shall appear before the learned District Judge on 06.01.2017 and for that purpose, no fresh notice be issued to the parties;
 - c. The learned District Judge will fix the appropriate date on 06.01.2017 and decide the Appeal as expeditiously as possible and in any case, within four weeks from the date of appearance of

the parties;

d. During the pendency of the appeal, as and by way of ad-interim order, the order of the trial Court shall remain in force;

e. Grant of ad-interim order shall not be construed as an expression of merits either way;

f. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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