

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3280/2015

Shri Naresh s/o Ganpatrao Zade and others

...Versus...

Shri Siddharth s/o Nandlal Saraf

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri G.L. Agrawal, Advocate for respondent - caveator

CORAM : SMT. VASANTI A NAIK, J.

DATE : 10.10.2016

The petitioners are the original plaintiffs. The petitioners had filed a suit for permanent injunction and an application was filed for temporary injunction, restraining the respondent-defendant from constructing the compound wall. The application for temporary injunction was allowed by the trial Court. The first appellate Court, by the impugned order, dated 12.2.2015 allowed the appeal filed by the respondent – defendant and set aside the order of the trial Court, granting temporary injunction in favour of the petitioners.

On a perusal of the impugned order, it appears that the first appellate Court was justified in allowing the misc. civil application filed by the respondent – defendant and setting aside the order granting temporary injunction in favour of the petitioners – plaintiffs. Though the land adjoining the land Khasra No.144 admeasuring 1.24 HR belonging to the petitioners

– plaintiffs was purchased by Fire Arcor Infrastructure Private Limited (bearing Survey Nos.139, 140, 141 and 143) and the said company was allegedly constructing the boundary wall for the property purchased by them, the petitioners – plaintiffs did not join the company as a party defendant and personally joined Shri Siddharth Nandlal Saraf, the Managing Director of Fire Arcor Infrastructure Private Limited as a defendant. The first appellate Court rightly held that it was necessary for the plaintiffs to join the Fire Arcor Infrastructure Private Limited as a party defendant and the plaintiffs – petitioners would not have joined only the Managing Director of the said Company as party respondent. The first appellate Court held that by issuance of the injunction order by the trial Court, the right of Fire Arcor Infrastructure Company was interfered with, though it was not made a party to the suit. The first appellate Court held and rightly so that grave and irreparable loss would be caused to Fire Arcor Infrastructure Company, if the injunction was granted without hearing the said company and without joinder of the company that was a necessary party to the proceedings. The order of the first appellate Court appears to be just and proper. Even otherwise, since the impugned order was passed on 12.2.2015, the same must have been implemented, by now. Though the petition was filed on 26.2.2015, the same was not circulated till date and hence, the petition did not come up for admission and hearing before this Court till today. It is most likely that in the absence of any stay to the impugned order, the compound wall must have been constructed by Fire Arcor Infrastructure Company, by now.

Since the order of the first appellate Court is just and proper, the writ petition is dismissed with no order as to costs. The trial Court is, however, directed to decide the suit filed by the petitioners as early as possible.

Order accordingly.

JUDGE

Wadkar

CERTIFICATE

I certify that this order uploaded is a true and correct copy of original signed order.

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