

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

WRIT PETITION NO. 3104/2016.

Bhartiya Seva Sadan.

-VERSUS-

Vijay Bacchaiprasad Tiwari

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 13, 2016.

Heard Shri A.R. Deshpande, the learned
Counsel for the petitioner and Shri C.N. Wankhede,
the learned Counsel for the respondent.

2. The challenge in present Writ Petition is to
an interlocutory order dated 24.05.2016, passed by the
Appellate Court on the application for grant of stay,
that was moved by the respondent herein in the said
appeal.

3. The petitioner is the original plaintiff who
has filed a suit for eviction of respondent along with
possession thereof. It is the case of the petitioner that
the respondent is in unauthorized occupation of the
suit property. In the said suit, the petitioner filed an

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application for temporary injunction restraining the respondent from making any construction on the suit property. The trial Court by an order dated 03.05.2016, allowed said application. The respondent being aggrieved filed Miscellaneous Appeal, challenging the said order. The Appellate Court while considering the application for grant of stay, passed an order on 24.05.2016, permitting the respondent to fix tin sheets on the structure in question. Thereafter time was granted to the petitioner to file its reply. Being aggrieved by this order, the petitioner has approached this Court.

4. Shri Deshpande, the learned Counsel for the petitioner submits that as the Trial Court had granted injunction, the Appellate Court was not justified in passing any interim order before deciding the appeal. According to him, as it was prima facie found by the trial Court that the respondent had no legal right to occupy the premises, such construction could not have been permitted.

5. Shri Wankhede, the learned Counsel for the respondent supported the impugned order. According to him, the Appellate Court rightly exercised

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the discretion by passing the interim order. He submits that presently, the tin sheets have been affixed on the structure.

6. It is found that the appeal preferred by the respondent is pending before the Appellate Court. It is not necessary at this stage to go into the merits of the respective contentions of the parties. Interests of justice can be met with by passing the following order :

ORDER.

(i) The Appellate Court shall decide Misc. Civil Appeal No. 45/2016 expeditiously and by the end of September, 2016.

(ii) The parties shall maintain the present position as on today, during the pendency of the said Appeal. This arrangement would be without prejudice to the rights of the parties.

(iii) Writ Petition is disposed of in aforesaid terms. No costs.

JUDGE

Rgd.

CERTIFICATE

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

Uploaded by : R.G. Dhuriya.

Uploaded on : 15.07.2016