

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1296 OF 2014

Parbat s/o Govind Sonawane
Age 57 years, occup. Agril.,
R/o Bhaygaonganga,
Taluka Vaijapur, District Aurangabad

.. Petitioner /
Original
Plaintiff

versus

Ashok s/o Manjahari Kadam,
Age 46 years, occup. Agril.,
R/o Undirwadi, Taluka Shrirampur,
Taluka Shrirampur, Dist. Aurangabad

.. Respondent/
Original Defendant

Mr. Ajit D. Kasliwal, Advocate for petitioner

Mr. N. S. Shah, Advocate h/f Mr. S. V. Natu, Advocate for respondent

CORAM : SUNIL P. DESHMUKH , J

DATE : 27-11-2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally by consent.

2. Learned counsel for the petitioner at the outset has submitted that the order of injunction passed in a non substring counterclaim wherein the court of first instance rejected the request of defendant in the suit and after counter-claim had not been subsisting, an application for order for temporary injunction has been entertained

by the appellate court and injunction is purported to have been granted. This court had at the very initial stage stayed operation of injunction so granted by the appellate court. He, therefore, submits that in stead of getting into merits of the case which may not be expedient now and may consume precious time, since the situation has been prevailing for over three years, the suit be directed to be disposed of within a limited duration as the suit has not been making any progress any progress after institution of writ petition.

3. Mr. N. S. Shah, learned counsel holding for Mr. S. V. Natu appearing on behalf of the respondent, however, has a different perspective and contends that it may not be an issue whether in a subsisting or non subsisting counterclaim injunction could not be granted against the plaintiff. He submits that in a deserving case with reference to section 94 of the Code of Civil Procedure, 1908 and with inherent powers, the court is adequately equipped to grant injunction against the plaintiff.

4. He quit emphatically refers to decision of this court in the case of *Harischandra Narayan Maurya vs. Rajendraprasad Dargahi Varma*, reported in 1997 (1) Bom.C.R. 28 in which aforesaid proposition has been expositioned.

5. He further refers to decision of this court in the case of *Nanasaheb vs. Dattu*, reported in AIR 1992 Bombay 24 : 1991 Mh.L.J. 685,

pointing out that the same has also been discussed in *Harischandra Narayan Maurya's* case (supra). He submits, petitioner has no case on merits and as such impugned order may not be faulted with.

6. Submissions on behalf of respondent though are quite persuasive, looking at prevailing position that interim relief is operating against injunction granted for over three years, it would be expedient that the parties address themselves in the suit for final decision at an early date.

7. In view of aforesaid, the trial court to go ahead with pending suit expeditiously and dispose it of preferably within a period of six months from the date of receipt of writ of this order.

8. interim order as has been operating to continue to operate for a period of six months from the date of receipt of writ of this court by the trial court.

9. With aforesaid, writ petition is disposed of. Rule made accordingly absolute.

SUNIL P. DESHMUKH
JUDGE

pnd