

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2702 OF 2016

Vijay d/o Sitaram Paturkar,
age: 57 years, Occ: Business
and service, R/o "Datta Niwas",
C.T.S. No.4418, Municipal
House No.2-17-56,
Machhali Khadak, Aurangabad.

Petitioner

Versus

Municipal Corporation,
Aurangabad,
through its Commissioner,
Municipal Corporation,
Aurangabad.

Respondent

Mr.P.N.Sonpethkar, advocate for the petitioner
Mr.Deelip Patil Bankar, advocate for the Respondent.

CORAM : S.B.SHUKRE, J.
DATE : 30th January, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 In the Misc. Civil Appeal, being M.C.A. No.33/2014, what was under challenge was the rejection of prayer of the petitioner to open seal of the suit property. Order of temporary injunction, issued against the Respondent – original defendant, to the effect that they shall not demolish the suit property till disposal of the suit, was never under challenge, as no cross appeal was filed against such an order of injunction by the Respondent.

Such being the scope of the Misc. Civil Appeal, the impugned order, which sets aside temporary injunction granted against the Respondent, can never be sustained in the eye of law. That apart, no opportunity of hearing, on this issue, has been granted to the petitioner. In fact, the Respondent, by its conduct, amply demonstrated that it was happy with the order of injunction passed against it and it has never filed appeal challenging the same. If this was the situation, one fails to understand as to why and on what ground the learned District Judge interfered with the order of temporary injunction granted against the Respondent, which was operating in favour of the petitioner. In this view of the matter, I think that this is a fit case for causing interference in the impugned order.

3 In the result, writ petition is allowed. The impugned order is quashed and set aside and the matter is remanded back to the learned District Judge for deciding Misc. Civil Appeal No.33/2014 afresh. The learned District Judge shall decide the Misc. Civil Appeal after hearing both the sides, as expeditiously as possible, preferably within one month from the date of appearance of the parties. Parties to appear before the learned District Judge on 7th February, 2017. Liberty to file Cross Appeal is granted to the Respondent and if its filed, maintainability of the same shall be decided on taking into consideration law of limitation.

4 Rule is accordingly made absolute in above terms. No costs.

S.B.SHUKRE
JUDGE