

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

933 WRIT PETITION NO. 3736 OF 2013

BHIVSEN PUNJAJI TARGHALE
VERSUS
HAJI SHAIKH AZIM S/O HAJI FATE MOHAMMAD AND
ANOTHER

Shri. Nikhil S. Jaju, Advocate, for petitioner.

Coram: T.V. NALAWADE, J.

Date: 7 July 2017.

ORDER:

1) The petition is filed to challenge the order made by the learned Principal District Judge, Aurangabad in M.A.R.J.I. No.18/2013. Notice of the present proceeding was served on the respondents but nobody has turned up.

2) The submissions made show that the Presiding Officer of the Court which had decided the temporary injunction application is transferred and there is no question of re-transfer of the matter to the same Judge but only academic point is involved due to the nature of the order made by the learned Principal District Judge.

3) Copy of order made by the trial Court on temporary injunction application in Special Civil Suit No.388/2011 is produced on record. It shows that the nature of the agreement is considered which is for *prima facie* purpose, for considering the relief of temporary injunction. It appears that the learned Principal District Judge has held that as the nature of the agreement is considered by the trial Court while deciding the temporary injunction application, there is possibility that the plaintiff may feel that he cannot get justice from the presiding officer due to such observations. This cannot be a ground for transfer of the matter. When any interim order is made by the Civil Court on application like temporary injunction application, *prima facie* case is required to be made out by the parties. The observations are *prima facie* and they are not on the basis of evidence which can be given during hearing of the case. Ultimately the matter is required to be decided on substantive evidence. Due to this aspect it can never be said that the Judge who decided the temporary injunction application has formed his mind for the case itself. Thus, it can be said that the ground mentioned for transfer of the suit

was not a ground for transfer and on such ground the matter ought not have been transferred. Now, as the Judge who decided the temporary injunction application is not available and the matter in any case will go to other learned Judge and so there is no need to set aside the order. With the aforesaid observations the matter is disposed of as dismissed.

Sd/-
(T.V. NALAWADE, J.)

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