

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6689 OF 2014

AGRICULTURE PRODUCE MARKET COMMITTEE KINWAT
VERSUS
ASHWAGHOSH ANANDRAO THAMKE

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Advocate for Petitioner : Shri A.G.Godhamgaonkar

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 11, 2017

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PER COURT :-

1. Despite notice being issued to the respondent on 4.8.2014, no appearance has been entered. Similarly, another notice dated 27.11.2014 was issued by this Court for final disposal, which was served on the respondent. Yet, no appearance has been entered. In this backdrop, I have heard the learned counsel for the petitioner.

2. The petitioner is aggrieved by the order dated 21.2.2014, by which, Misc. Civil Appeal No. 7 of 2014, filed by the respondent has been allowed and the petitioner is restrained from interfering in the possession of the respondent in the suit land. The appeal Court has directed the trial Court to dispose of the pending suit within one year. Learned counsel for the

petitioner submits that he has no knowledge as to whether the suit has been disposed off.

3. The grievance of the petitioner is that the respondent / plaintiff, who was using the suit land on rental basis for the purpose of a play ground and a cycle stand, had filed an application Exhibit 6 under Order XXXIX Rule 1 and 2 of the Civil Procedure Code ("CPC") claiming interim injunction in RCS No.2 of 2014. The petitioner claims to be the owner and title holder of the said land and was intending to sell the land pursuant to the publication of a notice in Daily Lokmat on 30.1.2014. An application Exhibit 12 was independently filed by the plaintiff despite Exhibit 6 pending before the Court. Interim status quo was prayed for by the plaintiff, which was refused by order dated 12.2.2014.

4. The plaintiff preferred MCA No.7 of 2014. The contention of the petitioner was that the said appeal is not maintainable because no order was passed by the trial Court under Order XXXIX Rules 1 and 2 of the CPC and as such the order passed on Exhibit 12 can only be termed as being an order under Section 151 of the CPC.

5. I find that the appeal Court has concluded that though Exhibit 12 does not mention any provision of the CPC, it has to be concluded that such orders are under the provisions of the CPC, permitting grant of interim relief. Refusal to grant ad-interim relief would also mean that the order was passed under Order XXXIX Rule 1 and 2 of the CPC.

6. It is on account of the direction of the appeal Court, expediting the suit and due to circumstances during the pendency of this petition, that I am not causing an interference in the impugned order. The impugned order is dated 21.2.2014, restraining the petitioner from interfering with the possession of the plaintiff to the extent of the suit land. This Court did not grant interim relief to the petitioner from July 2014. It is practically 3 years and 5 months that the impugned order is in existence and the appeal Court has directed the trial Court to dispose off the suit within one year.

7. Considering the above, this petition is disposed off with the direction to the trial Court to dispose off RCS No.2 of 2014, if not already decided, within a period of six months from today or

as per any other direction if has been issued by the Appeal Court.

8. Since application Exhibit 6 is pending, it would be open to the trial Court to decide the said application as expeditiously as possible and preferably on/or before 31.8.2017.

(RAVINDRA V. GHUGE, J.)

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