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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8870 OF 2017
WITH
WRIT PETITION NO.8871 OF 2017

Smt. Jayshree w/o Keshav Deshpande PETITIONER
Age – 55 years, Occ – Household
Through Power of Attorney Holder
Shri. Laxmikant Keshav Deshpande,
Age – 58 years, Occ – Labourer
R/o Ward No. 3, Deshpande Chall,
Shivaji Road, Taluka – Shrirampur
District – Ahmednagar

VERSUS

Shri. Somnath Narayan Kulthe RESPONDENT
Age – 48 years, Occ – Service,
R/o Somaya Organic Factory,
Labour Colony, Survey No. 2,
Room No. F-8, Purchase Office,
Kanhegaon (Sakharwadi),
Taluka – Kopargaon, District - Ahmednagar

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Mr. Rahul A. Tambe, Advocate for the petitioner
Mr. V. P. Latange, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 17th JULY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Aggrieved by orders dated 7th July, 2017 passed by District

Judge-2 Shrirampur in Miscellaneous Civil Appeals No. 2 of 2017 and 19 of 2016, in respect of same disputed property, the petitioner is before this court in two writ petitions.

3. Writ petition No. 8870 of 2017 pertains to Regular Civil Suit No. 282 of 2016 instituted by the petitioner for injunction against the respondent in respect of disputed property. Whereas writ petition No. 8871 of 2017 pertains to Regular Civil Suit No. 251 of 2016 instituted by respondent for injunction restraining the petitioner from demolition of suit property.

4. In regular civil suit No. 282 of 2016 instituted by the petitioner, he had preferred temporary injunction application Exhibit-5, which came to be granted by the trial court under order dated 8th March, 2017 restraining the respondent from causing obstruction to construction of new building at the suit property. Against said order dated 8th March, 2017, respondent preferred Miscellaneous Civil Appeal No. 2 of 2017 before District Court, Shrirampur.

5. Whereas, temporary injunction application Exhibit-5 in Regular Civil Suit No. 251 of 2016 filed by the respondent had been rejected by trial court under order dated 8th December, 2016. Against the same, Miscellaneous Civil Appeal No. 19 of

2016 had been preferred by the respondent.

6. Both, Miscellaneous Civil Appeals No. 19 of 2016 and 2 of 2017 were being simultaneously heard by the appellate court. Hearing of said matters went on for quite some time. During the course of said proceedings certain material was sought to be produced on behalf of the respondent.

7. During pendency of these appeals, petitioner had moved for police protection before trial court, which application had been rejected and as such, writ petition No. 6244 of 2017 has been filed by the petitioner, which is pending before this court. During pendency of said writ petition, appellate court purportedly has decided both aforesaid Miscellaneous Civil Appeals, remanding the matters for hearing before trial court, setting aside orders passed by trial court on temporary injunction applications of respective sides for re-decision thereon, taking into account material being placed before appellate court.

8. Learned advocate for the petitioner states that as a matter of fact, whatever material was sought to be produced, could have been seen by appellate court and decided the matters instead of sending the matters back to trial court. Learned

advocate for the petitioner submits out that orders passed by appellate court are rendered perfunctory, as those would not disclose objective application of mind and although there was no relief operating in the appeals, has purported to continue the same till decision on temporary injunction applications.

9. Learned advocate submits that this is a case wherein appellate court ought to have applied its mind to material sought to be produced and having regard to observations of the Supreme Court in the case of “*Ashwinkumar K. Patel V/s Upendra J. Patel*” reported in 1999 AIR (SC) 1125 : 1999 AIR (SCW) 780: 1999 (3) SCC 161. He particularly refers to and stresses on paragraphs No. 8 and 9 of said judgment, reading, thus-

“ 8. In our view, the High Court should not ordinarily remand a case under order 41 Rule 23 Civil Procedure Code to the lower court merely because it considered that the reasoning of the lower court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself decided the appeal one way or other. It could have considered the various aspects of the case mentioned in the order of the Trial court and considered whether the order of the Trial court ought to be confirmed or reversed or modified. It could have easily considered the documents and affidavit and decided about the prima facie case on the material available. In matters involving agreements of 1980 and 1996 on the one hand and an agreement of 1991 on the other; as in this case, such remand orders would lead to further delay and uncertainty. We are, therefore, of the

view that the remand by the High Court was not necessary.

9. We have also considered whether, on that account, we should send back the matter to the High Court for consideration of the appeal. We are of the view that on the facts of this case, this court can decide whether the temporary injunction granted by the Trial court should be confirmed or not. We are, therefore, not remitting the matter to the High court because a further remand would lead to delay and perhaps one more special leave petition to this court. ”

10. Learned advocate for the respondent submits that since certain documents have been produced and appellate court has considered it appropriate to send the matters back, it cannot be termed as erroneous orders.

11. Perusal of impugned orders shows that the miscellaneous civil appeals had been lingering on for quite some time for orders of appellate court. Looking at the observations in "*Ashwinkumar K. Patel's* case (*supra*) being referred to and relied upon on behalf of the petitioner, in the facts and circumstances of the case, it appears to be expedient that appellate court itself goes on with the matters and decides the same expeditiously taking into account material as is sought to be produced by the parties concerned.

12. As such, both the writ petitions stand allowed. Rule is made absolute in terms of prayer clause "B". Impugned orders

dated 7th July, 2017 passed by District Judge-2 Shrirampur in Miscellaneous Civil Appeals No. 2 of 2017 and 19 of 2016 stand set aside. Both the miscellaneous civil appeals stand restored before appellate court. District Judge-2, Shrirampur to proceed with the appeals so restored as expeditiously as possible and dispose of the same, giving adequate opportunity to parties concerned, by 4th August, 2017.

[SUNIL P. DESHMUKH, J.]

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