

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.11287 OF 2017  
(Ashok Ishwarappa Dongare Vs. Suvarna Sunil Kothari and others)

Mr.A.N.Nagargoje, Advocate for the petitioner.

( CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 19/07/2017 by which the Trial Court has rejected application Exh.82.
2. The petitioner submits that RCS No.5/2008 has been filed by him. An ad-interim protection was granted by the Trial Court on 28/03/2008 and the suit was expedited. Having allowed application Exh.5, the defendants were expected to implement the order and refrain from carrying out any construction on the property.
3. It is further pointed out that the petitioner then preferred an application Exh.57 under Order 39 Rule 2-A seeking punishment to the defendants for disobeying the order of injunction. A Court Commissioner was also appointed. In his report dated 11/04/2012, it was indicated that the defendants have initiated construction of a

wall and the dimensions of the said wall were also identified and mentioned in the report.

4. Contention of the petitioner is that the reason for filing application Exh.82 was for praying for a decision in the contempt of court application prior to the trial in the suit since the Trial Court can strike off the defence of the defendant Under Order 39 Rule 11 on account of disobedience of the injunctory orders. Grievance is that if the application under Order 39 Rule 2-A is heard alongwith the suit, though Order 39 Rule 11 would empower the Trial Court to strike off the defence of the defendants, it would not be possible for the Trial Court to pass such an order, since, by then the defendants would have already led their evidence.

5. I find that the petitioner has a misconceived apprehension. The Trial Court, while rejecting application Exhibit 82, has noted that the contempt of court proceedings can be conducted expeditiously if the plaintiff so desires. It is further recorded in paragraph No.7 that the contempt proceeding can be heard and decided expeditiously. This would mean that the Trial Court intends to consider the application under Order 39 Rule 2-A expeditiously and which is likely to occur before any decision in RCS No.5/2008.

6. That being the position, it is therefore left open to the petitioner to seek an expeditious hearing on his application under Order 39 Rule 2A as the Trial Court would be deciding the said application expeditiously.

( Ravindra V.Ghuge, J.)