

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5247 OF 2015**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Ajay A. Joshi, Advocate for Petitioner.

CORAM : R. G. KETKAR, J.

DATE : 08/12/2017

P.C.:

1. Heard Mr. Ajay A. Joshi, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 13.1.2015 passed by the learned Civil Judge, Senior Division, Pandharpur below Exhibit-5 in Special Civil Suit No.44/2014 as also the judgment and order dated 11.2.2015 passed by the learned District Judge-1, Pandharpur below Exhibit-5 in Civil Misc. Appeal No.7/2015. By these orders, the Courts below rejected the application made by the petitioner/plaintiff for temporary injunction restraining the respondent from erecting the compound wall so as to obstruct access leading to the shop premises of the petitioner.

3. In support of this Petition, Mr. Joshi submitted that the petitioner is carrying on business of Pan shop in an area admeasuring 10 x 10 sq. ft. on the North side of the

railway ground. The respondent intended to erect the compound wall so as to protect their property. In the process, they were trying to cause obstruction to the access to the petitioner's shop premises. The petitioner, therefore, instituted Suit and pending the Suit filed application for temporary injunction restraining the respondent from causing obstruction to the access to the petitioner's shop. He submitted that the trial Court rejected the application and the Appellate Court dismissed the application exhibit-5 relying upon following decisions:

- (i) Kishore Kumar Khaitan & Anr. v. Praveen Kumar Singh, AIR 2006 SC 1474;
- (ii) Skyline Education Institute (Pvt.) Ltd. v. S.L. Vaswani & Anr, AIR 2010 SC 3221; and
- (iii) Murugan v. Dept. of Housing and Urban Development, Bangalore, Laws (Kar) 2003-8-16 (High Court of Karnataka).

4. Mr. Joshi submitted that in paragraph-12, the learned District Judge recorded the submission advanced on behalf of the respondent that the petitioner did not produce any document in the appeal to show that he is in possession of the suit property. He submitted that the learned District Judge totally misdirected himself inasmuch as the petitioner has sought injunction restraining the respondent from erecting the compound wall so as to obstruct access to his shop. He submitted that therefore there was no question of the petitioner producing documents to substantiate his possession over the shop

premises. In fact the learned District Judge failed to appreciate that the documents were produced before the trial Court substantiating his possession over the shop premises.

5. I have considered the submissions advanced by Mr.Joshi. With his assistance, I have perused the impugned orders. In paragraph-10 of the order of learned District Judge, it is recorded that the work of construction of wall is substantially completed. The Courts below rejected the temporary application on the ground that no *prima facie* case was made out, no balance of convenience lies in favour of the petitioner and that he will not suffer irreparable loss if the temporary injunction is refused. In view thereof as also having regard to the fact that the work of construction of compound wall is substantially completed, no case is made out for interfering with the impugned orders. Hence, the Petition fails and the same is dismissed. Needless to observe that the learned trial Judge will decide the suit on the basis of evidence on record and in accordance with law. Order accordingly.

(R. G. KETKAR, J.)