

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13620 OF 2016**

Nandkumar Kisan Gote

..Petitioner.

Vs

Mr. Shaikh Jaweed Sarfraj and
Ors.

.. Respondents

Mr. Tushar Sonawane i/b Mr. Prashant S. Hagare, Advocate for
Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 10/02/2017

PC:

1. Heard Mr.Tushar Sonawane, learned counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 23.6.2015 passed by the learned Jt. Civil Judge, Sr. Dn., Pune below exhibit-62 in Spl. Civil Suit No.1392 of 2011. By that order, the learned trial Judge allowed the application filed by the respondent-plaintiff and struck out defence of defendant no.1 under Order XXXIX, Rule 11 of C.P.C. for committing breach of the order dated 21.10.2011 passed below Exhibit-36.

3. By High Court Notification dated 22.6.2009, Order 43, Rule 1(r) is amended. Amended provision reads thus :

“No.Rule/P.0102/77- In exercise of the powers conferred under Section 122 of the Code of the Civil Procedure Code, 1908 (Act V of 1908) and with the previous approval of the Government of Maharashtra the Hon'ble the Chief Justice and Judges are pleased to direct that the following amendment be made in Rule 1(r) of Order XLIII of the C.P.C. in super-session of the existing amendment made by the Bombay High Court on 1st October,1983. After the

amendment, the rule 1(r) will be as under:-

“(r) An order under rule 1, rule 2, rule 2-A where disobedience or breach of injunction is held proved or attachment of property is ordered, rule 4, rule 10 or rule 11 of Order XXXIX.”

In view of the above, the petitioner has an equally efficacious alternate statutory remedy of filing Appeal from Order/Misc. Civil Appeal. Hence, Petition is dismissed as not maintainable, reserving liberty to the petitioner to file Appeal from Order/Misc.Civil Appeal before appropriate Court. Registry is directed to return certified copy filed by the petitioner.

4. Mr.Sonawane submitted that by order dated 14.12.2016, till next date further proceedings of Spl. Civil Suit No. 1392 of 2011 are stayed and the said order is continued till today. He, therefore, submits that the said order may be continued for a period of two weeks from today so as to enable the petitioner to take appropriate steps.

5. In view thereof, notwithstanding dismissal of the petition, ad-interim order which is continued from 14.12.2016, shall remain in force for two weeks from today and thereafter shall stand automatically dissolved without further reference to the court. It is made clear I have not examined merits of the petition. All contentions of the parties are expressly kept open. Order accordingly.

(R.G.KETKAR, J.)