

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 2023 OF 2016

Rajendra Narayan Vishe & Anr. ... Petitioners
Vs.
Vignaharta Cooperative Housing Society Ltd. ... Respondent

Mr. A.S. Rao, Advocate for the petitioners.
Mr. Purushottam B. Naiknaware, Advocate for respondent no.1 .

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **21st June, 2017.**

P.C.:

Rule. Rule made returnable forthwith. By consent, the petitioner is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 21st September, 2015 passed by the learned District Judge, Thane in Miscellaneous Civil Appeal No. 139 of 2015 thereby confirming the order below Exhibit 5 in Regular Civil Suit No. 5 of 2015 dated 24th June, 2015 passed by the 4th Joint Civil Judge Junior Division, Bhiwandi.

3. The petitioners, who are the original defendants, claimed to be owners of the suit land. The respondent-Society is the original

plaintiff, who has filed the suit for cancellation of sale deed between defendant nos. 1 and 2. In the pending suit, interim order that the defendants shall not construct anything on the suit land was passed. The said order was challenged by the petitioners/original defendants in the Appellate Court. The Appellate Court maintained the said order of the trial Court. Hence, this Writ Petition.

4. Perused the orders of both the Courts. Considered the submissions of learned counsel for the petitioners. It appears from the order and record that the respondent-society is challenging the sale deed between defendant nos. 1 and 2, who are the son and father, as the Society claims that in fact the Society has interest in the suit land. Thus, it being a dispute in respect of title, it is necessary that the matter is to be decided on merits after considering the evidence. Meanwhile considering the three parameters of granting interim order under Order 39 Rule 1 of CPC, prima facie I am of the view that the trial Court and District Court have given legal view and no interference is required in the orders passed by the Courts below.

5. The learned counsel for the petitioners has submitted that the

structure, which was in existence earlier, is demolished by the petitioners and they want to reconstruct because it was a chawl consisting of 33 tenants, who are shifted from this place and they are waiting for the respective houses.

6. Writ Petition is dismissed.

7. The trial Court to expedite the suit preferably within one year. Parties to cooperate and not to seek adjournment.

(MRIDULA BHATKAR, J.)