

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4639 OF 2016

(RAJESH LAXMANRAO HARIYANI...VS.. MUSTAFA YUSUFBHAI BOHARA)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.S.Bhattad, advocate for Petitioner.
Shri A.S.Dhore, advocate for Respondent.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 18, 2017.

Heard.

The petitioner has challenged the order passed by the trial Court by which exercising jurisdiction under Section 10 of the Code of Civil Procedure *suo motu* the proceedings of Regular Civil Suit No. 39 of 2016 filed by the petitioner are stayed till the decision of Regular Civil Suit No. 72 of 2015 filed by the respondent. The learned advocates for the respective parties have submitted that while considering the preliminary objection of the respondent to the maintainability of the civil suit and the application praying for temporary injunction, the learned trial Judge has exercised his jurisdiction under Section 10 of the Code of Civil Procedure *suo motu* and has recorded that both the parties are claiming to be in possession of the suit property, that the two suits are between the same parties and regarding the same property regarding same reliefs and therefore, the subsequently filed civil suit has to be stayed.

On query, the learned advocates for the respective parties have stated that issues are not yet framed in any of the civil suit.

Considering all the above aspects, in my view, the impugned order is unsustainable as it should not have been passed at this stage.

Hence, the following order.

- i) The impugned order is set aside.
- ii) The parties are granted liberty to move application under Section 10 of the Code of Civil Procedure, if so advised, after issues are framed in the civil suits.

The petition is **disposed** in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE