

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1351 OF 2018
(Haribhau Baburao Dolase Vs. Anil Vinayak Deshmukh)

Mr.A.R.Borulkar h/f Mr.N.L.Choudhari , Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/02/2018

PER COURT :

1. The petitioner is the original plaintiff who is aggrieved by the order dated 20/11/2017 passed by the Appellate Court by which application Exh.30 filed by the plaintiff / appellant seeking interim injunction in RCA No.167/2012, has been rejected.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner. Grievance is that though the petitioner succeeded in SCS No.138/2001 establishing that the defendant had agreed to sell the suit property by virtue of the agreement of sale dated 05/07/1999, the Trial Court did not direct the defendant to execute the sale deed and instead directed the petitioner / plaintiff to receive the amount which he had paid. A consequential direction was issued to the defendant to return the amount paid by the petitioner alongwith interest.

3. The record reveals that the shop admeasuring 600 Sq.Ft., which the petitioner claims to have purchased, has different sharers besides the defendant who has executed the agreement to sale. Considering that there were several shareholders in the property in CTS No.148, the Trial Court did not grant the reliefs prayed for by the plaintiff. Since a construction is being undertaken purportedly by the said defendant, the petitioner had sought injunction vide Exh.30. Same has been rejected on the ground that it is unclear whether the defendant himself is making the construction or that the son of his brother, who has a share, is causing some construction. It is also unclear whether the defendant is making changes in the structure of the suit shop or is actually demolishing the said shop.

4. Considering the above, I do not find that the impugned order can be termed as being perverse or erroneous. The regular civil appeal is pending for at least 6 years and the ends of justice would be met by directing the Appellate Court to decide the said appeal expeditiously.

5. As such, this petition is disposed of with the direction to the appellate Court to decide RCA No.167/2012, as expeditiously as possible and preferably on or before the 30/09/2018.

(RAVINDRA V. GHUGE, J.)