

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1217 OF 2018

TAPAS KANTI MANDAL
VERSUS
COSMO FILMS LTD AURANGABAD

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Advocate for the Petitioner : Shri Adwant S.V.
Advocate for the Respondent : Shri A.D.Kasliwal.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 31st January, 2018

Per Court:

1 The learned Advocates for the Petitioner and the Respondent, on being called upon to state whether, they have any objection if this Court hears this matter, both the learned Advocates stated that they have no objection if this Court considers this petition.

2 The Petitioner is aggrieved by the order dated 29.01.2018, which is a continuation of the ex-parte ad-interim order dated 16.01.2018 passed below Exhibit-5 in RCS No.16/2018 by which, an embargo/restriction has been put on the Petitioner from taking up an employment elsewhere.

3 I have considered the submissions of the learned Advocates for the respective sides for brief moments. Ex-facie, the grievance of the

Petitioner appears to be that when he had appeared in the matter and had submitted his Written Statement on 29.01.2018, an application Exhibit-11, filed by the Respondent Company seeking continuation of the ex-parte ad-interim order, should have been entertained by the Court only after hearing the litigating sides. Without calling for the Say of the Petitioner, an ex-parte ad-interim order has been extended till 05.02.2018. It is further informed that the Trial Court stated in open court that as the matter is posted on 05.02.2018, the parties would be heard on the application Exhibit-5 and thereafter, the orders would be delivered by 07.02.2018.

4 The learned Advocate for the Respondent Company submits that this petition would be untenable in law as the Petitioner has an efficacious statutory remedy of preferring a Miscellaneous Civil Appeal and this petition may not be entertained.

5 It appears from the submissions of the learned Advocates that considering the embargo created upon the Petitioner by the ex-parte ad-interim order, he is precluded from taking up an employment elsewhere and as such, he is deprived of his day to day earning. He cannot be prevented from earning daily bread for himself and his family under the Court's orders. Several other grounds are canvassed, which I am not dealing with since I would be directing the Trial Court to decide the application Exhibit-5 expeditiously.

6 Considering the above, this Writ Petition is disposed of in the following terms:-

- (a) The Trial Court is directed to hear the litigating sides on Exhibit-5 on 05.02.2018.
- (b) Both the litigating sides are permitted to tender their written notes of arguments and copies of the judgments to be cited. Both the litigating sides would conclude their submissions by the end of 05.02.2018.
- (c) Since it is conveyed that the Trial Court is likely to decide Exhibit-5 by 07.02.2018, it be noted that the Trial Court shall pass a reasoned order by considering all the contentions of the litigating sides including the contentions of the Petitioner/ Defendant though the Trial Court has been purportedly misled by the Respondent/ Plaintiff.
- (d) It is expected that the Trial Court shall decide Exhibit-5 as expeditiously as possible and in any case, on or before 17.02.2018.