

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4799 OF 2016

ISRAR AJLKHAN PATHAN AND ANOTHER
VERSUS
SHAIKHDAR NAWAB ISMAILSAHEB

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Advocate for Petitioners : Shri Deshpande A.S.
h/f Shri Adgaonkar R.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 24, 2018

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PER COURT :-

1. The petitioners / defendants are facing RCS No.170 of 2012, by which the plaintiff seeks injunction against the defendants on the ground that the defendants are erecting illegal construction or are disturbing the construction of the compound wall by the plaintiff.

2. The defendants filed a Written Statement alleging to the contrary, claiming that the plaintiff himself is indulging in illegal construction. In a suit for simpliciter injunction, the defendants, without filing any suit or initiating any proceedings, desire that the trial Court should frame an issue as to whether the plaintiff is resorting to an illegal construction.

3. On 8.7.2014, the trial Court rejected the application of the defendants Exhibit 74, contending that an issue be framed as regards alleged illegal construction by the plaintiff. While disposing of the said application, the trial Court has recorded that the issue No.1 takes care of the issues suggested by the defendants in application Exhibit 74.

4. The defendants then filed application Exhibit 82 praying for a review of the earlier order dated 8.7.2014. The trial Court has rejected the said application by the impugned order concluding that the defendants are indulging in delaying tactics having sought an adjournment for cross-examination of the plaintiff on six dates, seeking eight adjournments on the application for appointment of Court Commissioner Exhibit 44 and further filing Exhibit 82 seeking a review of the earlier order. The trial Court has then concluded that the application does not deserve any consideration.

5. I find that though the defendants have alleged that the plaintiff has resorted to an illegal construction, they have not availed of any remedy as is permissible under the CPC to redress their grievance against the purported legal injury caused to them by the conduct of the plaintiff. Even if the trial Court was to consider whether the construction of the plaintiff is legal or not, no orders

could be passed against the plaintiff in his own suit when the defendants have not resorted to any legal remedy on that count.

6. Considering the above, I do not find any merit in this petition and the same is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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akl/d