

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

WRIT PETITION NO. 9677 OF 2018

SUNIL PANNALAL AGRAWAL AND OTHERS
VERSUS
RAMNIVAS BANSILAL LAKHOTIYA THROUGH LRS TARADEVI RAMNIVAS
LAKHOTIYA AND OTHERS

...
Advocate for the Petitioners : Shri R.S.Wani h/f Shri Bajaj Anil S..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th August, 2018

Per Court:

1 The Petitioners, original Appellants before the Appellate Court, are aggrieved by the interlocutory order dated 19.12.2017 passed by the learned Principal District Judge, Jalna by which, the interim application filed by the Petitioners in Regular Civil Appeal No.170/2017 has been allowed subject to certain conditions, which are set out in the operative part of the impugned order, which reads as under :-

- "1. *The impugned judgment and order/ decree dated 08.09.2017 passed in Spl.C.S. No.81/2008 by the learned 4th Jt. Civil Judge (S.D.), Jalna shall stand stayed only in respect of possession of suit shops subject to the following condition :-*
- (A) *The amount which would be arrived at in the future mesne profit inquiry directed in the impugned judgment and order; shall be paid to the respondent No.2 by the appellants.*
- (B) *Till the inquiry of future mesne profit is completed*

and not executed as per the impugned judgment and order, the appellants shall pay Rs.5,000/- per month in respect of each of the suit shops to the respondent No.2 from the date of appeal, which would be adjusted in the amount arrived at in future mesne profit inquiry.

(C) The appellants shall not create third party interest in the suit shops till final decision of appeal.

2. The application stands disposed of accordingly."

2 I have considered the strenuous submissions of the learned Advocate for the Petitioners. He has drawn my attention to the fifteen grounds formulated by him in the memo of the petition and with his assistance, I have gone through the judgment of the Trial Court dated 08.09.2017 by which, Special Civil Suit No.81/2008 has been decreed in favour of the Plaintiffs and the Counter Claim of these Petitioners has been dismissed.

3 It cannot be ignored that the main appeal is pending before the learned Appellate Court. An equitable order has been passed by the Appellate Court directing the Petitioners/ Appellants to pay Rs.5000/- per month per suit shop. The said amount is to be adjusted after the enquiry in the future mesne profit is concluded.

4 Notwithstanding the vehement submissions of the learned Advocate for the Petitioners, I do not find that the impugned interlocutory order could be termed as being perverse or erroneous so as to cause gross injustice to the Petitioners. Keeping in view the law laid down by the

Honourable Supreme Court in the matters of *Syed Yakoob v/s K.S.Radhakrishnan, AIR 1964 SC 477 and Surya Dev Rai v/s Ram Chander Rai, AIR 2003 SC 3044*, no interference is to be caused unless the impugned order appears to cause gross injustice to the litigating sides.

5 In view of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

6 Needless to state, all the contentions of the litigating sides in the appeal are kept open.

kps

(RAVINDRA V. GHUGE, J.)