

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

WRIT PETITION NO. 4786 OF 2018

**SHRIRAM TULSHIRAM DHAWALE
VERSUS
SARJERAO BANDU PAWAR**

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Advocate for the Petitioner : Shri M. G. Kolse Patil
Advocate for Respondent Nos. 1 and 2 : Shri S.A. Deshmukh

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 18th SEPTEMBER, 2018.

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PER COURT :

1. The petitioner-plaintiff is aggrieved by the order dated 27/11/2017, by which, the application for temporary injunction Exhibit 5, filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, has been rejected only because the counsel for the plaintiff was not present for making his submissions.

2. I have heard the learned Advocates for the respective sides. The respondent vehemently opposes this petition and prays that this petition deserves to be dismissed with heavy costs. Though the suit was instituted on 17/02/2016, the T.I.

Application was not argued until 27/11/2017 when it was eventually dismissed. In the alternative, it is submitted that if this Court is inclined to entertain this petition, costs of at least Rs. 5,000/- (Rs. Five Thousand only) should be imposed on the petitioner.

3. Having considered the submissions of the learned Advocates, I find that the learned trial Court should have avoided rejecting the application by disposing it of only because the plaintiff's Advocate was not present. The pendency of T.I. Application would render the plaintiff without injunction, unless an *ex parte ad interim* injunction has been granted. I do not find from the impugned order that the trial Court has disposed off the Exhibit 5 Application on the ground that the plaintiff is enjoying the *ex parte ad-interim* protection and is prolonging the hearing on Exhibit 5.

4. Considering the above, this petition is partly allowed. The impugned order dated 27/11/2017 is quashed and set aside and application Exhibit 5 is restored in RCS No. 35/2016 subject to the petitioner- plaintiff depositing costs of Rs.

5,000/- (Rs. Five Thousand only) before the learned trial Court on or before 06/10/2018. Upon depositing the costs, the defendant shall withdraw the said amount without conditions.

5. The petitioner- plaintiff shall advance his oral submissions on application Exhibit 5 on the next date and shall not seek an adjournment.

(RAVINDRA V. GHUGE, J.)

shp/-