

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

927 WRIT PETITION NO. 5115 OF 2017

VENKATRAO MUKUNDRAO NEMMANIWAR
VERSUS
THE NAGAR PARISHAD KNIWAT,
THROUGH ITS CHIEF OFFICER NANDED

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Advocate for Petitioner : Mr. A. G. Godhamgaonkar.

Advocate for Respondent : Mr. B. A. Darak.

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CORAM : **V. K. JADHAV, J.**
DATE : 24th January, 2018.

ORDER:

. The Petitioner / original Plaintiff has instituted the suit for a decree of perpetual injunction and also for declaration about one notice dated 18th July, 2016. The Petitioner / Plaintiff has also filed an application Exhibit 5 for issuance of temporary injunction. The subject matter of suit is the property owned by the Respondent / Defendant i.e. Municipal Council, Kinwat bearing Reservation No.7 situated at Sarafa Lane, Kinwat, Taluka Kinwat, District Nanded. The Trial Court has rejected the said application Exhibit 5 by order dated 25th November, 2016 in Regular Civil Suit No.28 of 2016. Thus, the Petitioner / Plaintiff has preferred Miscellaneous Civil Appeal No.98 of 2016 before the District Court, Nanded. The learned District Judge by impugned

judgment and order dated 23rd March, 2017 partly allowed the appeal with certain directions. Hence, this writ petition.

2 The learned counsel for Petitioner / Plaintiff submits that during the pendency of the said miscellaneous civil appeal as detailed in paragraph 8 of the impugned order, the Petitioner / Plaintiff has filed his affidavit Exhibit 25 and agreed to deliver the vacant possession of the school premises on 15th May, 2017 to the Defendant / Municipal Council. However, since the examination of the children studying in the school was going on, by consent of the parties, the possession was protected till 15th May, 2017. Admittedly, after the said date i.e. 15th May, 2017, the possession of the suit property has been delivered to the Respondent / original Defendant. The learned counsel submits that the suit is simplicitor for perpetual injunction and declaration of one notice as void and illegal and the Respondent / Defendant has not preferred any counter claim. However, the learned District Judge in paragraph 12 has observed that the dispute is also regarding the rent demanded by notice dated 18th July, 2016. The learned District Judge has given reference to the said notice for which the declaration has been sought and further directed the Petitioner / Plaintiff in the impugned order to deposit Rs.5,00,000/- before the Trial Court within

15 days from the date of the order. The learned counsel submits that this writ petition is preferred to the extent of clause (3) of the operative part of the impugned order wherein the learned District Judge has directed the Petitioner / Plaintiff to deposit Rs.5,00,000/- before the Trial Court. The learned counsel submits that the said order is unwarranted and uncalled for in absence of any counter claim preferred by the Respondent / Defendant. Even though the possession has been handed over in view of the affidavit filed by the Petitioner / Plaintiff to the Respondent / Defendant, still then the dispute about the rent and tax is pending consideration and as such, the learned District Judge has exceeded the jurisdiction to direct the Petitioner / Plaintiff to deposit certain amount.

3 The learned counsel for Respondent / original Defendant submits that the Petitioner / Plaintiff has also sought declaration about the demand notice of the rent and certain controversy is there about the rent amount and arrears of the rent amount. In view of the same, the learned District Judge has rightly directed the Petitioner / Plaintiff to deposit Rs.5,00,000/-. There is no substance in the writ petition. The writ petition is devoid of merit.

4 On careful perusal of clause (3) of the operative part of the impugned order, I find that in the miscellaneous civil appeal, the learned District Judge has almost decided the suit on merit. The learned District judge has directed that if the Plaintiff fails to deposit the amount of Rs.5,00,000/- as directed, the Defendant shall recover the entire demanded amount as per the procedure. The learned District Judge has ignored that the declaration is specifically sought in respect of the demand notice and the suit is pending for that purpose before the Trial Court. It is for the Trial Court to pass an appropriate order / decree after full-fledged trial of the suit. In view of this, the writ petition is allowed to the extent of clause (3) of the operative part of the order. Hence, the following order:

ORDER

- I. The writ petition is hereby partly allowed. No costs.
- II. The impugned judgment and order dated 23rd March, 2017 passed in Miscellaneous Civil Appeal No.98 of 2016 is hereby quashed and set aside to the extent of clause (3) of the operative part of the order.

III. Rest of the order stands confirmed.

IV. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]

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