

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10141 OF 2018
(Agricultural Produce Market Committee, Jintur Vs. Sanjay Gandhi
Shikshan Prasarak Mandal and another)

Mr.S.S.Thombre, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/10/2018

PER COURT :

1. The petitioner / APMC is aggrieved by the order dated 10/07/2018 passed by the Appellate Court by which M.C.A. No.22/2018 filed by the APMC for challenging the order of injunction passed by the Trial Court on 12/02/2018, has been rejected.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner.

3. The respondent/original plaintiff preferred RCS No.69/2016 as the APMC had proceeded to demolish the encroached structure. The said suit was dismissed in default on 05/12/2017. C.M.A. No.96/2017 was filed by the plaintiff seeking restoration of the said suit, on 19/12/2017. The Trial Court, without considering the application for restoration and by presuming that the suit is likely to

be restored, granted ex-parte ad-interim relief on 22/01/2018. By order dated 12/02/2018, application Exh.8 filed by the plaintiff was allowed and protection was granted to the plaintiff. Grievance is that the restoration application is kept pending and the Trial Court has granted such relief u/s 151 of the CPC, which is an unprecedented order.

4. Considering the peculiar facts as above, I find that it would be a travesty of justice to keep this petition pending in this Court and deal with the issue of the ad-interim protection granted by the Trial Court without any order on the restoration of the suit. In my view, normally, the discretion of the Court is not exercised in favour of a sleeping litigant who has allowed the suit to be dismissed in default.

5. In view of the above, this petition is disposed of with a direction to the learned Joint Civil Judge, Jr.Division, Court No.2 at Jintur to decide C.M.A. No.96/2017 as expeditiously as possible and in any case, on or before 31/01/2019. The Trial Court would refuse adjournments to the litigating sides if they are found to be based on unreasonable and trivial grounds.

(Ravindra V.Ghuge, J.)