

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

WRIT PETITION NO. 11141 OF 2018

Dilip Shankarrao Bodle

..Petitioner...

VERSUS

Dattu Santram Bhople

..Respondent..

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Advocate for Petitioner : Mr. Thombre S.S.

Advocate for Respondent : Mr Jadhav Kakasaheb B.

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CORAM : N.M. JAMDAR, J.

Dated: November 21, 2018

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ORAL ORDER :-

By this Writ Petition, the petitioner has challenged the order passed by the learned District Judge-11, Aurangabad in Misc. Civil Appeal No.120 of 2018, allowing the appeal filed by the respondent/defendant and setting aside the order passed by the Civil Judge Junior Division, Paithan, granting temporary injunction in favour of the petitioner.

2. The petitioner has filed RCS No.58 of 2017 for perpetual

injunction against the respondent/defendant. The defendant has also filed Special Civil Suit No. 190 of 2017 which is pending before the learned Civil Judge S.D., Aurangabad. The suit filed by the petitioner before the learned Civil Judge is for specific performance of an agreement. According to the petitioner, petitioner had purchased the suit property by registered sale deed after taking the necessary permission. According to the respondent, there is an agreement in favour of the respondent which is prior to the sale deed of the petitioner. In Special Civil Suit no.190 of 2017, the respondent/plaintiff therein applied for temporary injunction. Learned Civil Judge S.D. had granted an order of status quo which is pending. Thereafter, the learned Civil Judge J.D. Paithan in the present suit upon an impression that status-quo granted in Special Civil Suit No.190 of 2017 has not been continued and proceeded to adjudicate the application for temporary injunction filed by the petitioner and granted the same. The learned District Judge, Aurangabad in Misc. Appeal filed by the respondent against the said order found that this exercise of grant of temporary injunction when the other Court, in a suit between the same parties, had granted an interim order, was not correct and set aside the order.

3. Thus, the position as on date is that the injunction in

favour of the petitioner has been set aside which is granted to the petitioner in the suit filed by him and there is an order of status-quo is operating in the suit filed by the respondent.

4. It is trite that 'status-quo' is not a specific order of injunction. Such vague orders are to be avoided, especially when the parties are contesting the factum of possession. Therefore, as on date there is no adjudication in respect of who is in possession of the suit property. The exercise carried out by the learned Civil Judge in the present suit has been correctly found by the learned District Judge to be correct. The learned District Judge has opined that it would be appropriate that both the suits are tried together. Learned counsel for the parties agreed that both the suits can be tried together. Therefore, petition can be disposed of by directing that the suits be heard together.

5. As regards the aspect of possession and consequential injunction is concerned, directions can be issued to the learned Civil Judge who had hear both suits to take up the applications filed by the petitioner and defendant/respective plaintiffs in their suits for consideration. For that purpose, the applications filed by the petitioner under exhibit 5 stands revived.

6. Accordingly, writ petition is disposed of as under :-

i] The learned Principal District Judge, Aurangabad is requested to issue necessary directions for clubbing of Special Civil Suit No.190 of 2017 and RCS No.58 of 2017 and assign the same to the same learned Judge.

ii] The parties will appear before the Court with whom these suits are pending on the date stipulated, after the suits are clubbed and assigned to one judge.

iii] The learned Judge will decide the application for temporary injunction. Both the applications below exh.5 in these suits be decided together on their own merits within a period of two months thereafter.

iv] In view thereof, the observations made in all the orders regarding temporary injunction in these two suits are to be treated as prima facie and the applications be decided irrespective of the observations made in the orders, on their own merits.

7. Writ petition is accordingly disposed of in above terms.

(N.M. JAMDAR, J.)

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