

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

WRIT PETITION No. 13358 of 2017

Umesh S/o Bansilal Jain,
age 26 years occupation business
R/o plot No. 31, Bhaga Mohan Nagar,
near Wakharkar Nagar, behind Cotton Market,
Dhule Taluka and District Dhule

**...Petitioner
(Orig. plaintiff)**

VERSUS

1. Kalpana Manoj Mandhune,
age 53 years occupation business
R/o Datta Colony, Erandol Taluka Erandol District Jalgaon
AND
Ambedkar Chowk,
near Dhule Municipal Corporation Complex,
Dhule Taluka and District Dhule
2. Mayur Deshmukh,
age 38 years occupation business
R/o Mandhune Trading Company,
Erandol District Jalgaon
3. Yogesh
age 33 years occupation business
R/o Mandhune Trading Company,
Erandol District Jalgaon.

**...Respondents
(Original defendants)**

Mr Sachin S. Katariya, Advocate, holding for Mr Subodh P. Shah,
Advocate for petitioner
Mr V.B. Anjanwatikar, Advocate for respondents No.1 and 2

CORAM : SUNIL P. DESHMUKH, J.

DATE : 9th October, 2018

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for both the parties finally, by consent.

2. Petition is moved being aggrieved by order passed on composite application Exhibit – 5 at the instance of present petitioner-plaintiff for temporary injunction not to alienate the property referred to in the suit and praying as well, to attach the same and to keep charge thereon. Initially, *ex parte* order had been passed by the trial court injuncting defendants/respondents from dealing with the property referred to in application. Subsequently, under order dated 8th August, 2017 application came to be rejected.

3. Learned counsel for petitioner submits that while it is the case of petitioner that there had been dealing of purchase of goods worth Rs. 4,35,200/- with the respondents/defendants, yet, pursuant to the transaction the goods were not supplied and therefore, the suit has been instituted. Later on, it transpired that defendants have not been fair in dealings, even with others. Defendants are possessed of certain immovable property referred to in the suit and the same would be security for amount claimed under the suit and, as such, application had been moved for aforesaid purposes. Learned counsel further points out paragraph

No.11 of impugned order which refers to that according to defence taken by defendants, there is nothing placed on record about delivery of some part of goods or for that matter amount received by defendants from plaintiff having been remitted to sub dealer. According to learned counsel, however, the trial court has drifted away to certain other aspects purporting to consider that petitioner has not made out a case for an order pursuant to order XXXVIII Rule 5 of the Civil Procedure Code. He submits that even in such a case while only security is the property referred to that would be available, the defendants ought to have been restrained from alienating or transferring the immovable property and such an order had been operating during pendency of the application. He submits that the circumstances in which defendants have been placed itself shows that they are likely to deal with the property and said aspect has been completely ignored by the trial court while passing order.

4. Learned counsel for respondents/defendants, on the other hand, submits that the petitioner/plaintiff has failed to make out any case whatsoever about defendants' fleeing the place or for that matter selling the property with a view to defeat claims of plaintiffs and others. Defendants are victims of the circumstances and they are in difficulty. Imputations hurled by petitioner are without any substance, and, as such, the

application has been rightly rejected by the trial court. He further, on instructions, states that, defendants do not intend to deal with the property and would not deal with the same until disposal of the suit.

5. Submissions of learned counsel for petitioner that the trial court has ignored that it was a composite application and has considered application only for one relief as if same being pursuant to Order XXXVIII Rule 5 of the Civil Procedure Code, may carry some water, however, court has also considered that petitioner has not been able to show requisites of the same order substantially. Looking at the observations of the trial court about apprehension expressed by petitioner that defendants are intending to deal with property, is not borne out from the circumstances appearing on record and further, the defendants have made a statement before this court that they would not deal with the property until the suit has been decided, it does not appear that impugned order requires any meddlesome approach.

6. It would be in the fitness of the things that the trial court would proceed with the suit expeditiously. As such, the petition is disposed of.

(SUNIL P. DESHMUKH)
JUDGE.