

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3373 OF 2018

|                             |    |             |
|-----------------------------|----|-------------|
| Dagdu Sonu Khomane          | .. | Petitioner  |
| vs.                         |    |             |
| Maruti Nathu Khomane & Ors. | .. | Respondents |

Mr. P. J. Pawar for Petitioner.  
None for Respondents.

**CORAM : M. S. SONAK, J.**  
**DATE: 26 MARCH 2018**

**P.C :**

- 1] Heard Mr. Pawar, the learned counsel for the petitioner.
- 2] The challenge in this petition is to the orders dated 31<sup>st</sup> October 2017, 6<sup>th</sup> October 2016 and 22<sup>nd</sup> April 2014, all of which, have granted interim reliefs in favour of the respondents who were defendants in the suit instituted by the petitioner.
- 3] Mr. Pawar submits that since the suit was instituted by the petitioner, there was no question of entertaining any application from the respondents (defendants) for interim relief. He submits that in case, the respondents, had any cause of action, it was for them to institute a separate suit or at least, have filed counter claim. In the absence of all this, the trial court, was not at all justified in granting interim relief to the respondents. For these reasons, he submits that the impugned orders made by the trial courts and the

appeal courts are liable to be set aside.

4] Mr. Pawar submits that the appeal court, has failed to consider the affidavit filed by the respondent no. 1 and his son, supporting the case of the petitioner. For all these reasons, Mr. Pawar submits that the impugned orders are liable to be set aside.

5] The suit in the present case, is for redemption of mortgage. In such a suit, the respondents who are defendants, apprehending change of status quo or disturbance of their possession, have applied for some limited interim relief. Under such circumstances, a defendant to a suit can always seek appropriate interim orders. The trial court, by stating reasons, has granted such limited interim relief. The appeal court, has not interfered with the exercise of discretion by the trial court. The review petition instituted by the petitioner before the appeal court has also not met with success.

6] Appeal against discretionary orders are appeals on a principle. In this case, it cannot be said that there is any perversity or error or approach. The relief granted is also quite limited. In these circumstances, no case is made out to interfere with the impugned orders merely because some specific cognizance may not have been taken of the affidavit filed by the respondent no. 1 and his son before the appeal court.

7] For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

8] However, it is clarified that none of the observations in the impugned orders or for that matter the present order shall influence the learned trial Judge whilst disposing of the suit on its own merits and in accordance with law.

**(M. S. SONAK, J.)**

Chandka