

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5945 OF 2017

Mr. Motiram Gena Shinde & Ors.	...Petitioners
V/s.	
Mr. Sopan Maruti Shinde (Deceased)	
Through legal heirs & Ors.	Respondents

Mr. Vivek Vijay Salunke for the Petitioners.

Mr. Sugandh B. Deshmukh for the Respondents.

CORAM : M.S. SONAK, J.

DATE : 1st MARCH, 2018

P.C.

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The challenge in this petition is to the judgment and order dated 24.04.2017 by which, the Appellate Court, has upset the interim relief granted by the Trial Court to the Petitioners/Plaintiffs by order dated 06.11.2012.

3. Mr. Salunke, the learned counsel for the Petitioners points out that the Regular Civil Suit No.383/2012 in which the injunction was

granted and now has been upset by the impugned order is at an advance stage. He points out that the deposition of Plaintiff No.1 is completed and the deposition of other plaintiffs/witnesses is currently in progress. He submits that the injunction order in favour of the Petitioners has been in operation till the year 2012. Now that, the suit is at an advance stage, the Appellate Court, ought not to have interfered with such order by ignoring the principles in the case of *Wander Ltd. & Anr. V/s. Antox India P.Ltd.*¹.

4. Mr. Sugandh Deshmukh, the learned counsel for the respondents submits that the Appellate Court, upon detailed consideration of the facts and circumstances on record has held that the Petitioners were not entitled to any interim relief. He points out that there is no jurisdictional error or perversity in the impugned judgment and order and therefore, this petition may not be entertained.

5. Mr. Deshmukh submits that in case interim relief is granted to the petitioners, there is possibility that the petitioners will delay the disposal of the suit. However, invariably, on such basis, even after the suit is dismissed, interim relief can be applied for in appeal. He,

¹ 1990(Supp)SCC 727

therefore submits that this petition may be dismissed.

6. The petition, involves arguable issues. That if the petition has to be admitted, then, interim relief which was in operation since the year 2012 may have to be continued, then that will not be in the interest of justice, even if the respondents, as pointed out by Mr. Deshmukh. Rather since the suit itself, is at an advance stage, the interest of justice will be made if the learned Trial Judge is directed to dispose of the suit itself on its own merits and in accordance with law as expeditiously as possible in any case within a period of six months from the date of production of authenticated copy of this order.

7. In view of the apprehensions expressed by Mr. Deshmukh, however, it is necessary to clarify that this Court has not examined the matter on merits and therefore, at later stage, if and when any occasion arises, continuation of interim relief may not be applied for on the sole ground that the injunction has been in operation during the pendency of the suit. No doubt, upon merits such reliefs can be applied for and there shall be no bar to such application.

8. Accordingly, it is directed that the status-quo order which is

now granted by the Appellate Court on 29.04.2017 is directed to be continued until the disposal of Regular Civil Suit No.383/2012. The learned Trial Judge is directed to dispose of this suit as expeditiously as possible in any case within a period of six months from today. The suit is to be disposed of on its own merits and in accordance with law. All contentions of all parties are kept open. In disposing of the suit, the learned Trial Judge need not be influenced by interim order, including, the present order since the suit is required to be decided on its own merits and in accordance with law. The Rule is disposed of in the aforesaid terms. There shall, however, be no order as to costs.

9. All the concerned to act on an authenticated copy of this Order.

(M.S. SONAK, J.)