

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7360 OF 2018**

Kisan Sakharam Thakur	]	Petitioner
Vs.		
Hemant Raghunath Thakur	]	Respondent
.....		
Ms. Anjali Neel Helekar, for Petitioner.		
.....		

CORAM : R.G. KETKAR, J.

DATE : 6TH AUGUST, 2018.

P.C.

Heard Ms. Helekar, learned Counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and decree dated 4th May, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai in P.S.C.C Appeal No.167 of 2017. By that order, the Appellate Court dismissed the appeal preferred by the plaintiff against the judgment and decree dated 9th October, 2017 passed by the learned Judge, Court Room No.26 in L.E Suit No.75/98 of 2009.

3. Ms. Helekar invited my attention to the assertions made in paragraph 7 onwards of the Petition. In paragraph 7, it is contended that on 7th December, 2017, the Appellate Court admitted the appeal. As the respondent wanted to create third party interest in the suit premises, the petitioner took out application Exhibit 6 for injunction restraining the respondent from transferring and/or alienating or mortgaging the right, title and interest or creating third party rights in respect of the suit premises or parting with

possession of the suit premises. In paragraph 8, it is contended that the petitioner's Advocate argued Exhibit 6 on 20th March, 2018 and thereafter hearing of the application was adjourned to 2nd April, 2018 for arguments of the respondent's Advocate. On 2nd April, 2018, the respondent's Advocate sought adjournment and the matter was adjourned to 5th April, 2018. On 5th April, 2018, the matter was adjourned to 17th April, 2018. On 17th April, 2018, the respondent's Advocate advanced submission on Exhibit 6 and the matter was adjourned to 4th May, 2018 for passing order on Exhibit 6, however, instead of disposing of Exhibit 6, the Appellate Court without hearing the parties, dismissed the appeal on 4th May, 2018. It is also evident from the record that the plaintiff has filed application on the next date i.e on 5th May, 2018 for recalling the order dated 4th May, 2018. It is contended that the Court refused to accept the application and directed the petitioner to take steps.

4. I assume in favour of the petitioner whatsoever stated in paragraph 9 of the Petition is true and correct and the Court refused to accept the application moved by the petitioner on 5th May, 2018 for recalling the order dated 4th May, 2018, it is necessary to issue direction to the Appellate Court to accept the application moved by the petitioner on 5th May, 2018 for recalling the order dated 4th May, 2018.

5. The Appellate Court will fix a suitable date and hear the parties on this application and pass appropriate order in accordance with law. All the contentions of the parties on merits are expressly kept open. Subject to this, no case is made out to entertain this Petition. The Petition is disposed of. Liberty is reserved to the petitioner to challenge the order passed on the application dated 5th May, 2018 as also in case, the application filed on 5th May, 2018 is rejected to challenge the impugned order dated 4th May, 2018 passed in Appeal No. 167 of 2017. Order accordingly.

6. All the parties including the Appellate Court to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]