

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

WRIT PETITION NO. 12909 OF 2017

Nandkishor Ramdas Aher	...	Petitioner
V/s.		
Shital Sharad Shinde	...	Respondent

- Ms.Vrishali Raje i/b. Mr.Pramod N. Joshi for the Petitioner.
- Mr.Girish R.. Agrawal for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 5th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and the Respondent.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 4th October 2017 passed by the District Judge-2, Niphad, in Miscellaneous Civil Appeal No.74 of 2017.

3] The said Appeal was preferred by the Respondent herein challenging the order of interim injunction passed below Exhibit-11 and 14 restraining the Respondent herein from doing any type of construction over 13 Are land.

4] The perusal of the order passed by the trial Court below Exhibit 11 and 14 on 3rd October 2017 goes to show that the application at Exhibit-11 was filed by the Respondent/Defendant seeking adjournment. The Petitioner/Plaintiff has therefore filed an application at Exhibit-14 seeking the relief of ad-interim injunction/status-quo. The Respondent filed say to the said application.

5] The trial Court considered the submissions advanced and held that if the adjournment is to be granted to the Defendant and if during the period the suit is adjourned, the Defendant continues to carry out construction, then it will cause irreparable loss and hardship to the Plaintiff and therefore, till the filing of say to the application for interim injunction by the Defendant, the trial Court restrained the Defendant from carrying out any construction or the work of digging in the suit property.

6] The Defendant challenged this order by preferring Misc. Civil Appeal No. 74 of 2017. The Appellate Court entered into the merits of the case and without understanding that whatever order was passed by the trial Court was merely of an interim arrangement, till the Defendant files the say to the application of interim injunction at Exhibit-5, set-aside the order passed by the trial Court, below

Exhibit-11 and 14. However, while doing so, the Appellate Court also issued *ex-parte* ad-interim order against the Plaintiff thereby directing him not to cause any obstruction to the construction of the Defendant over the 13 Are land owned by her.

7] In my considered opinion, this part of the order of the Appellate Court was totally unwarranted. There was no such application also made by the Defendant restraining the Plaintiff from causing obstruction to her construction. Hence, one fails to understand why the Appellate Court was constrained to pass such order. Therefore, that part of the order cannot be sustainable in the eyes of law and hence, accordingly stands set-aside.

8] As regards the other part of the order passed by the Appellate Court, setting aside order of ad-interim relief status granted by the trial Court, this Court need not enter into the merits of the said order, as the application at Exhibit-5 is still pending before the trial Court. Hence, the interest of justice require that both the parties be directed to approach the trial Court for deciding the application at Exhibit-5 on merits. It would serve the interest of justice, if the trial Court is directed to decide the said application as expeditiously as possible.

9] Accordingly, Writ Petition is allowed partly. The impugned order passed by the Appellate Court of issuing ex-parte ad-interim injunction order against the Plaintiff thereby directing him not to cause any obstruction to the construction of the Defendant over 13 Are land, owned by her is set-aside.

10] Both the parties are reverted to the trial Court and the trial Court is directed to decide the application at Exhibit-5 as expeditiously as possible and preferably within one month from the date of receipt of this order.

11] At this stage, learned counsel for the Respondent/Defendant submits that now the Defendant has filed the counter claim and he may seek the order of interim injunction against the Plaintiff. Needless to state that, he is always liberty to do so and if he files such application, it would be decided by the trial Court along with application at Exhibit-5.

12] In view of the above, the Miscellaneous Civil Appeal No.74 of 2017 also stands disposed of.

13] Writ Petition is accordingly disposed of.