

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

902 CIVIL APPLICATION NO. 8367 OF 2019
SECOND APPEAL (ST.) NO.36590 OF 2017

GANPAT RAMJI GHISEWAD
VERSUS
HANMANT SHESHERAO DESHPANDE LRS DHANANJAY AND ANOTHER

...
Advocate for Appellant : Mr. Jadhav Ganesh M.
Advocate for Respondents : Mr. Anuj Fulfagar h/f. P.R. Katneshwarkar
...

CORAM : MANGESH S. PATIL, J.
DATE : 07.11.2019

PC. :-

This is an application by the original defendant who has filed this Second Appeal being aggrieved by the concurrent findings of the two Courts below granting perpetual injunction in favour of the respondent-original plaintiffs. By way of this application the appellant is seeking stay to the proceeding pending before the executing Court in the form of R.J.E. No. 51/2016 filed by the respondents under Order XXI Rule 32 of the C.P.C. alleging that he has committed breach of the order of injunction on 14.08.2016 and should be proceeded against for the breach.

2. The learned advocate for the appellant-applicant submits that when this Second Appeal has been preferred it would not be appropriate for

the executing Court to proceed with the inquiry for the alleged breach. It would cause prejudice to him and would make his Second Appeal redundant. The respondents should therefore be not allowed to prosecute that proceeding.

3. The learned advocate for the respondents-plaintiffs opposes the application on the ground that the consequences for the alleged breach should ensue as a logical and legal corollary and this Court in this Second Appeal cannot injunct the executing Court from undertaking an inquiry in that respect.

4. Admittedly, the respondents are armed with a decree for perpetual injunction restraining the applicant-appellant from obstructing them in using a way to their agricultural field. The learned advocates of both the sides are unanimous that there was a temporary injunction in force in their favour during pendency of the suit as also during pendency of the First Appeal. Admittedly, till date the operation and execution of the judgment and decree impugned in the Second Appeal has not been stayed.

5. If such is the state of affairs, when the respondents-plaintiffs are making a grievance about there being breach of the perpetual injunction which happened on 14.08.2016, they are indeed entitled to make a grievance

before the executing Court and resort to the provisions of Order XXI of the C.P.C. Merely because the original defendant has preferred this Second Appeal, the respondents cannot be refrained from making grievance about the alleged breach. Even the executing Court cannot be obstructed in enforcing the judgment and decree passed when there is no stay.

6. Considering the aforementioned aspects there is no merit in the application and it is dismissed.

[MANGESH S. PATIL, J.]