

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

934 WRIT PETITION NO.9667 OF 2016

DIGAMBAR DAGDU DESHMUKH AND ANOTHER	.. Petitioners
<u>VERSUS</u>	
NAVNATH BHAUSAHEB DESHMUKH	.. Respondent

...
Advocate for Petitioners : Shri K.N. Shermale
Advocate for Respondent : Shri V.Y. Bhide
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**CORAM : PR. BORA, J.
Dated: July 26, 2019**

PER COURT :-

1. Heard finally with consent of the learned counsel appearing for the parties. The order dated 06.08.2016 passed by Additional Sessions Judge, Sangamner below application at Exh.12 in Regular Civil Appeal No.12 of 2016 is challenged in the present petition. The aforesaid application was filed by the present respondent, who is the appellant before the First Appellate Court, for temporary injunction restraining the respondents i.e. present petitioners from carrying out any sort of construction over the suit property till the disposal of the appeal. The application has been allowed by the First Appellate Court and the said order is challenged in the present petition.

2. Shri Shermale the learned counsel appearing for the petitioners submitted that, the petitioners have already submitted an

undertaking to handover the construction, if allowed to be made, in as it is condition, if ultimately the result of the appeal goes against them. The learned counsel submitted that, in such circumstances, the First Appellate Court could not have allowed the application at Exh.12. The learned counsel has placed his reliance upon the judgment of the Hon'ble Apex Court in the case of **Mandali Ranganna and Ors Vs. T. Ramachandra and Ors, AIR 2008 SC 2291.**

3. Shri Bhide the learned counsel appearing for the respondent has supported the impugned order.

4. After having heard the learned counsel appearing for the parties and after having gone through the impugned order and the other material placed on record, it appears to me that, there is no propriety now in passing any order or disturbing the order passed in the year 2016. It appears to me that, it would be in the interest of both the parties that, the appeal is finally heard and the rights of the parties are decided by the First Appellate Court.

5. It is informed that, the First Appeal is pending at the stage of preparation of paper book. The learned counsel appearing

for the respondent undertakes to submit the compilation of the evidence recorded in the matter i.e. excluding the exhibited documents, so that, the appeal can be effectively heard. Considering the submissions so made, I deem it appropriate to pass the following order.

ORDER

(i) The First Appellate Court is directed to hear and decide Regular Civil Appeal No.12 of 2016, as expeditiously as possible, preferably within the period of six months.

(ii) The appellant in the said appeal shall place on record the compilation of notes of evidence in the matter in the form of paper book. As such, the paper book shall be dispensed with by the First Appellate Court.

. With the observations as above, the Writ Petition stands disposed of.

(P.R. BORA, J.)

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