

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

CIVIL APPLICATION NO.12078 OF 2019

IN

WRIT PETITION NO.6685 OF 2017

BHAUSAHEB SAKHARAM DHOKANE

VERSUS

VIMAL ASHOK KALE AND OTHERS

WITH

WRIT PETITION NO.6685 OF 2017

VIMAL ASHOK KALE

VERSUS

BHAUSAHEB SAKHARAM DHOKANE AND OTHERS

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Advocate for the petitioner in WP 6685/2017 and respondent no.1 in CA :
Shri Pravin S. Dighe.

Advocate for the applicant in CA and respondent no.1 in WP : Shri Manoj
Patil h/f Shri Wagh Shirinivas S.

AGP for Respondents 2 to 5 : Shri S.W.Munde

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th October, 2019

Per Court:

1 Since the learned advocates for the respective sides were prepared on the merits of the matter, this Civil Application is disposed off and the writ petition has been heard.

2 The reason that brings the petitioner/ plaintiff to this Court is the impugned order dated 04.05.2017 passed by the Trial Court by

which, the plaint is purportedly returned to the plaintiff though no such specific order was passed.

3 The impugned order reads as under :-

"Perused application and affidavit filed. Heard Ld. Advocates for plaintiff. Perused body of plaint and documents filed for better understanding of facts. It appears that the plaintiff has made serious allegations against Revenue Authorities. The purpose for issuance of notice u/s 80 of C.P.C. is nothing but to give opportunity to Govt. bodies and to avoid unnecessary litigations. At the same time other remedies are available to plaintiff. Cause of action shown of 07.04.2017 and thereby time was available for plaintiff to issue statutory notice. She has to comply mandatory provisions first."

4 The learned advocate for the defendants submits that appropriate procedure would be to issue a notice under Section 80 and the suit can then be registered.

5 The learned advocate for the petitioner/ plaintiff submits that subsequently compliance of Section 80 of the Code of Civil Procedure has been done by the plaintiff and the plaint can be presented for being registered as a suit.

6 In view of the above and considering the statement of the plaintiff that compliance of Section 80 has already been done, this Writ Petition is rendered infructuous and stands disposed off. The petitioner/ plaintiff would be at liberty to tender her plaint for being registered as a suit. The application for seeking temporary injunction, if filed along with

the suit, would be considered by the Trial Court on it's own merits.

7 The learned advocate for the petitioner submits that since his constructed house is under a threat of demolition, the relief granted in vacation by this Court dated 23.05.2017 may be continued for some time.

8 The learned advocate for the defendants has strenuously opposed the said request.

9 Considering the above, on the condition that the petitioner/plaintiff shall present her plaint for registration as a suit on or before 22.10.2019, the ad-interim relief granted by this Court would continue till 30.11.2019 so as to enable the plaintiff to seek orders on her temporary injunction application, which would be considered by the Trial Court independently on it's own merits.

kps

(RAVINDRA V. GHUGE, J.)