

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12367 OF 2018

Smt. Nirmala Suryakant Nerlekar

..Petitioner.

V/s.

Vitthal Tukaram Fulare

..Respondent.

Mr.Satyajeet A.Rajashirke for the petitioner.

None for the respondent.

CORAM : M.S.SONAK, J.

DATE : APRIL 26, 2019

P.C.:-

Heard Mr.Rajashirke, learned counsel for the petitioner.

2. Challenge in this petition is to the order dated February 1, 2018. The impugned order directs the sugar factory to deposit an amount towards the sugarcane dues in the Court and thereafter notes that all these amounts will be adjusted at the final hearing of the suit.

3. Mr.Rajashirke, learned counsel for the petitioner submits that the impugned directions are in fact in favour of the petitioner. He submits that on the basis of such findings, including the finding that it is the petitioner who has been in possession of the suit property, the order made by the trial Court on January 11, 2018 came to be set aside. He, therefore, submits that the impugned directions can never have

been issued. In the alternative, he submits that the petitioner is willing to give an undertaking to bring back the amount to the Court, in case it is decided against the petitioner.

4. Having considered the aforesaid contention and upon perusal of the material on record, according to me, the order made by the Appeal Court is quite equitable and warrants no interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

5. Though, the Appeal Court has recorded a finding in favour of the petitioner on which basis set aside the trial Court's injunction order dated January 11, 2018, nevertheless, the Appeal Court was quite justified in requiring the sugar factory to deposit the amount in the Court. It is not as if the Appeal Court has ruled that the plaintiff in the suit has made out no case whatsoever. In fact, it is the case that trial Court has granted an injunction in favour of the plaintiff which no doubt was vacated in appeal. The conditions imposed is most reasonable, especially if considered along with directions for expediting of the suit. An additional direction can also be issued for investment of the said amount which may be approximately Rs.75,000/- or so when both the parties are depending upon the outcome of the suit and obtaining some interest on this deposited amount. Accordingly, this petition is disposed of without interfering with the impugned order,

with the following directions:-

- a) Regular Civil Suit No.646/2016 is directed to be disposed of as expeditiously as possible and in any case before May 30, 2020;
 - b) The amount which the sugar factory is required to deposit as per the impugned order be directed to be invested in any nationalized bank initially for a period of one year;
 - c) The invested amount to abide by the final orders in the suit;
6. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.
7. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)