

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

**WRIT PETITION NO.5697 OF 2017
WITH
CIVIL APPLICATION NO.2300 OF 2018**

Ishwar Pandit Sonawane

.. Applicant

V/s.

Dy. Commissioner (Encroachment)
Nashik Municipal Corporation and Anr. .. Respondents

Mr.Omkar Nagvekar I/b Ms.Prabha Badadare for the applicant

Mr.Vaibhav P. Patankar for the respondent no.1

**CORAM: K.K. TATED, J
DATED : FEBRUARY 26, 2019**

P.C. :

1 Heard.

2 By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 15.04.2017 passed by 2nd Joint Civil Judge, Senior Division, Nashik below Exhibit-9 in Regular Civil Suit No. 516 of 2016 rejecting Petitioner's Application for status quo.

3 In the present proceedings, Petitioner original plaintiff filed Regular Civil Suit No. 516 of 2016 restraining Respondent from

demolishing their suit structure. In that Petitioner preferred Application below Exhibit-5 for an order of injunction. During the pendency of the said Application, Petitioner preferred Application below Exhibit-9 for status quo order.

4 After hearing both the sides for some time, they submitted minutes of order dated 26.02.2019. Same is taken on record and marked 'X' for identification which reads thus:

"MINUTES OF ORDER

1. *The dispute between the Petitioner and Respondent is regarding demolition of unauthorized construction alleged to have been carried out by the Petitioner.*
2. *The notice issued by Respondent for demolition is under challenge before the Civil Judge (Senior Division), Nashik in Regular Civil Suit No. 516 of 2016.*
3. *The Order dated 15.04.2017 passed by the 2nd Civil Judge (Senior Division), Nashik below Exhibit-9 refusing to grant status-quo is challenged by the Petitioner in Writ Petition No. 5897 of 2017 in which by order dated 26.05.2017 the parties are directed to maintain status quo.*
4. *In view of the aforesaid facts and circumstances following order is passed :*
 - (a) *Impugned order dated 26.05.2017 passed by the 2nd Civil Judge (Senior Division), Nashik below Exhibit-9 in Regular Civil Suit No. 516 of 2016 is hereby quashed and set aside.*
 - (b) *The Petitioner is granted liberty to file appropriate application seeking permission to cover demolished part of suit house before the*

Ld. Trial Court.

- (c) The said application preferred by Petitioner may be disposed of in accordance with law giving opportunity to hearing to both parties.*
- (d) The order of status-quo passed by this Court on 26.05.2017 is continued till disposal of Exhibit-5 in Regular Civil Suit No. 516 of 2016 pending before the Ld. 2nd Civil Judge (Senior Division), Nashik.*
- (e) Hearing of the Suit is expedited.*
- (f) There is no order as to cost.*
- (g) Writ Petition disposed of accordingly.”*

5 Advocate for the Respondent submits that Respondent no.1, Mr.R.M.Bahiram, Deputy Commissioner (Encroachment) and Mr.J.P. Raut, Section Engineer Planning Department is present in court. His presence is recorded.

6 Writ Petition stands disposed of in terms of minutes of order.

7 No order as to costs.

8 In view thereof, Civil Application No.2300 of 2018 does not survive. The same stands disposed of as infructuous.

9 It is made clear that Petitioner is restrained by an order of injunction by creating any third party right, title and interest in respect of the suit premises till the hearing and final disposal of the Application below Exhibit-5.

Parties to act on authenticated copy of this order.

(K.K. TATED, J.)