

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

**APPEAL FROM ORDER NO. 642 OF 2018
WITH
CIVIL APPLICATION NO. 845 OF 2018**

Mahakali Mahila Sahakari Dudh
Swanshta Limited

... **Appellant**

V/s.

Yallappa Rama Shintre

... **Respondent**

Mr.Ganesh Chavan for Appellant.
Mr.D.B. Patil for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 19th November 2019.

PC. :

1] By the present Appeal, the appellant has impugned Order dated 14th February 2018 passed below Exhibit-13 in Civil Appeal No.62 of 2017, rejecting the said application, filed by the appellant, thereby refusing to grant injunction in favour of the appellant during the pendency of the said appeal and restraining the respondent from disturbing the peaceful possession of the appellant over the suit property.

2] Heard Mr.Chavan, learned counsel for the appellant and Mr.Patil, learned counsel for the respondent. Perused the entire record.

3] The record indicates that, the appellant had filed Regular Civil Suit No.46 of 2008 against the respondent for permanent injunction, restraining him from obstructing the possession of the appellant. The learned Joint Civil Judge Junior Division, Gadhinglaj, by its Judgment and Decree dated 8th November 2017 has dismissed the said suit. Feeling aggrieved by the dismissal of the said suit, the appellant has preferred the present Appeal No.62 of 2017 which is pending for final adjudication on the file of the learned District Judge-1, Gadhinglaj, District Kolhapur. As noted earlier, in the said appeal, the appellant had filed an application below Exhibit-13 seeking temporary injunction against the respondent pending the hearing and final disposal of the said appeal, restraining the respondent from carrying out construction in the suit land allegedly in possession of the appellant. As noted earlier, by the impugned Order dated 14th February 2018 the Appellate Court has rejected the said application.

4] Perusal of record would further indicate that, in the suit instituted by the appellant, i.e. RCS No.46 of 2008, the appellant has failed to prove the basic fact that, it has any right, title or interest in the suit property described more particularly in para No.1 of the plaint. As the basic ingredient to constitute any right in favour of the appellant has not been proved by it before the Trial Court, the Trial Court was pleased to dismiss the suit instituted by it. The record clearly indicates that, the respondent has been put in possession of

the suit property under the Orders of the Court of competent jurisdiction and the said fact is an admitted fact.

5] In view of the above, I find no merits in the Appeal.

Appeal is accordingly dismissed in *limine*.

6] In view of dismissal of the Appeal, nothing survives in the Civil Application and is accordingly disposed off.

[A.S. GADKARI, J.]