

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3062/2019

Haridas Deokisanji Rath

Vs.

Nitin Shambhulaji Kothari

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Nikhil A. Gaikwad, Advocate for petitioner.

Shri A. H. Daga, Advocate for respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : NOVEMBER 20, 2019.

1. The petitioner is the original plaintiff who is aggrieved by the order passed by the trial Court below Exhibit 5 rejecting the application that was preferred under provisions of Order 38 Rule 5 of the Code of Civil Procedure, 1908 seeking attachment of properties of the respondent – defendant on the ground that the defendant was making attempts to defeat the rights of the plaintiff by creating third party rights over the suit property. By the impugned order the trial Court has rejected that application.

2. It is informed that the suit is at the stage of recording evidence and the plaintiff is being cross-examined. In para nine of the impugned order the arguments made on behalf of the defendant have been reproduced in which it has been stated that

the defendant did not intend to alienate the properties. Considering the fact that evidence is being recorded before the trial Court, the suit in question can be directed to be decided expeditiously. To avoid multiplicity of the litigation, the defendant can be directed to be bound by the statement as recorded in para nine of that order.

3. Accordingly the following order is passed:

The proceedings in Special Civil Suit No.173 of 2017 are expedited. The trial Court shall take necessary steps to decide the same expeditiously and preferably within period of six months from today. Till the suit is decided the statement as recorded in para nine of the order dated 29.01.2019 that the defendant shall not create any third party rights is accepted. This direction is without prejudice to the respective contentions. All points are kept open. The Writ Petition is disposed of in aforesaid terms. No costs.

JUDGE