

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

Writ Petition No.3321 of 2019
Dnyaneshwar Ghode & Anr. Vs. Bala Zade

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

Court's or Judge's orders

Mr. Abhijit Deshpande, Advocate for petitioners
Mr. Rohit Joshi, Advocate for respondent

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 22, 2019

By this writ petition, the petitioners (original defendants) and appellants before the Court below have challenged order dated 12/03/2019, whereby an application for stay filed on behalf of the petitioners was rejected.

2. In the present case, the respondent had filed a suit for permanent and mandatory injunction against the petitioners claiming that a right of way to his agricultural field had been illegally blocked by the petitioners. The suit was decreed by judgment and order dated 15/12/2017 and the petitioners were restrained from creating any obstruction on the said way.

3. The petitioners filed an appeal challenging the said judgment and decree passed by the Trial Court

and they also moved an application for grant of stay. The documents filed along with the writ petition show that the rival parties had agreed before the Appellate Court that the application could be taken up for hearing with the appeal and that the final hearing of the appeal would be expedited.

4. It appears that thereafter the petitioners were constrained to file another application for stay as the respondent was pressing for execution of the decree. By the impugned order, the Appellate Court rejected the application for stay.

5. While issuing notice on 24/4/2019, in the present writ petition, this Court had passed the following order.

“Heard learned counsel for the petitioners.

2. Issue notice returnable on 12th June, 2019.

3. In the meanwhile and until further orders, there shall be interim relief in terms of prayer clause (c). It is made clear that this interim order shall not come in the way of the Appellate Court to consider and decide the appeal expeditiously.”

6. As is evident from the above quoted order, this Court had made it clear that the interim order granted by this Court would not come in the way of the Appellate Court in considering and deciding the appeal expeditiously. The respondent appeared and filed

submissions on 25/06/2019 in this Court, claiming that while during pendency of the proceedings before the Trial Court, an alternative way was available due to which the respondent could cultivate his agricultural land, but, in the recent past such alternative way was not conveniently available because a canal had been dug by the neighbouring land holders and, therefore, it was necessary that the interim order granted by this Court be vacated and the Appellate Court be directed to expeditiously dispose of the appeal.

7. Considering the fact that this Court granted interim relief on 24/4/2019 and submissions were filed by the respondent on 25/6/2019, making his aforesaid claim, it appears that despite passage of further period of time of five months, the respondent has been able to approach his agricultural field though facing certain inconvenience.

8. Taking an overall view of the facts and circumstances brought on record, this Court is of the opinion that interest of justice would be served if the interim order granted by this Court is continued for a further period of two months and the Appellate Court is directed to dispose of the appeal within the aforesaid period.

9. Accordingly, the writ petition is disposed of by directing that interim order dated 24/4/2019,

granted by this Court shall continue to operate, till disposal of the appeal before the Appellate Court. The Appellate Court is directed to positively dispose of the appeal within a period of two months from today.

10. The filing of paper book before the Appellate Court is dispensed with as record will be available before the Appellate Court.

11. It is further made clear that no further extension of time will be granted to the Appellate Court.

12. The Appellate Court shall decide the appeal without being influenced by the order passed by this Court on 24/04/2019 and observations made by this Court in the present order.

JUDGE