

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

WRIT PETITION NO.3580/2016

Nagpur Improvement Trust, through its Chairman, Civil Lines, Nagpur.
Vs.

Ajay Bahuuddeshiya Sewa Mandal Society through its Secretary - Shri S.M.Mahakalkar

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R.O.Chhabra, Advocate for petitioner.

Ms. Ramnik Kaur Dadiyal, Advocate with Shri S.L.Kotwal, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATED : September 04, 2019

Heard.

The challenge raised in the present writ petition is to the order dated 04.11.2015 that has been passed by the appellate Court on the application moved by the petitioner herein under the provisions of Order XXXIX Rule 2-A of the Code of Civil Procedure, 1908 (for short, 'the Code').

It is the case of the petitioner that in the miscellaneous appeal preferred by the respondent herein the learned District Judge was pleased to pass an order on 15.10.2009 directing the parties to maintain status-quo till the next date. According to the petitioner, under the garb of that order the respondent herein commenced activities of re-constructing a compound wall at the suit site. In view of the complaint made by the residents of the neighbouring area the petitioner called upon the respondent to stop making that construction. Despite that, it is the case of the petitioner that the respondent continued with the said construction.

Hence on 18.12.2009 the petitioner moved the aforesaid application under the provisions of the Order XXXIX Rule 2-A of the Code.

In the reply filed by the respondent it was denied that under the garb of the interim order any such construction was made. It was stated that the compound wall had been demolished and the status-quo as directed was being maintained.

The parties examined the witnesses in support of their contentions. The learned Judge of the appellate Court found that there was no clear material on record to indicate the position as prevailing on 15.10.2009 when the interim order came to be passed. On that count, it was held that there was no material to indicate any wilful disobedience of the order of status-quo.

I have heard learned counsel for the parties who reiterated the contentions that were raised before the appellate Court. On perusing the evidence led by the parties, I do not find any reason to take a different view from the view taken by the appellate Court. In paragraph 11 of the impugned order, the entire material has been taken into consideration for recording a finding that there was nothing on record to indicate wilful breach of the order of status-quo. Under provisions of Order XXXIX Rule 2-A of the Code it was necessary for the petitioner to have placed on record such material that would have indicated a clear breach of the order of status-quo. That material is however lacking.

In that view of the matter, there is no reason to interfere with the impugned order. The writ petition is therefore dismissed. No costs.

JUDGE