

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

Writ Petition No.6776 of 2018

Navneet S/o Late Visheshwardayal Shukul
Vs.
Bai Khatijabai Haji Ibrahim Tayyab Trust

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

Court's or Judge's orders.

Mr. Dara Singh, Advocate for the Petitioner.

CORAM : MANISH PITALE, J.
DATED : APRIL 08, 2019.

1. This writ petition is filed by the original defendant (tenant) against the order dated 20th April, 2016 passed by the Appellate Court dismissing the appeal filed by the petitioner to challenge the order dated 27th September, 2012 whereby an application for temporary injunction (Exh.5) filed by the respondent (original landlord) has been allowed.

2. The respondent has filed a suit for eviction against the petitioner and in the said proceeding an application was filed for temporary injunction to restrain the petitioner from undertaking any structural changes during the pendency of the suit. It was the case of the petitioner that the application filed by the respondent was without any basis, because there was no question of structural changes being undertaken and what was found by the trial Court in the appeal concurrently was not based on the material

available on record.

3. The Small Causes Court took into consideration the material that was available on record as on 27th September, 2012 and the application (Exh.5) stood allowed in favour of the respondent and against the petitioner.

4. Aggrieved by the same, the petitioner filed an appeal before the appellate Court, claiming that the findings rendered by the Small Causes Court were not sustainable. By the impugned order dated 20th April, 2016, the appellate Court has concurred with the findings of the Small Causes Court and the order granting the application for temporary injunction in favour of the respondent has been upheld. Although, it is strenuously argued on behalf of the petitioner that the concurrent findings rendered by the two Courts below are unjustifiable and no structural changes were being undertaken by the petitioner, the fact remains that both the Courts below have, *prima facie*, concluded otherwise.

5. Record shows that the order of Small Causes Court was passed on 27th September, 2012. The appeal filed by the petitioner stood dismissed from 20th April, 2016 which means that the petitioner has been suffering the order of temporary injunction from 27th September, 2012 till date and a period of about seven years has passed and the parties are still lingering on the question of temporary injunction. This Court is of the opinion that two concurrent findings are

against the petitioner on the question of grant of temporary injunction and the order of temporary injunction has been operating since 27th September, 2012. No case for interference or reconsideration is made out by the petitioner. At the same time, the anxiety expressed on behalf of the petitioner that the suit is being protracted by the respondent before the Small Causes Court, could be taken care of by giving directions for early disposal of the suit.

6. Accordingly, the writ petition is found to be without any merit and the same is dismissed. The Small Causes Court is directed to take up Regular Civil Suit No. 181 of 2012 for consideration, immediately, and to dispose of the same, as expeditiously as possible, and preferably within a period of eight months from today. Needless to say the concurrent findings by the two Courts below on the application for temporary injunction are *prima facie* in nature and therefore the Small Causes Court shall not be influenced by the same while deciding the case on merits. The writ petition is disposed of.

JUDGE