

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

Writ Petition No.7865 of 2018

(Sukhdeo Ramchandra Kalbande .vs. State of Maharashtra and others.)

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

Smt. S.W. Deshpande, Advocate for Petitioner.
Shri A.D. Sonak, AGP for Respondent Nos. 1 to 4.

CORAM : Manish Pitale, J.
DATED : April 02, 2019.

By this writ petition, the petitioner (original plaintiff) and appellant before the appellate Court, has challenged order dated 31.07.2018, whereby application filed by the petitioner for grant of injunction against the respondent has been rejected.

2. The said application was moved before the appellate Court claiming that on 08.10.2017 certain anti-social elements assaulted the son of the petitioner and sought to disturb possession of the petitioner in the suit property. The appellate Court has taken into consideration the fact that the trial Court upon full-fledged recording of evidence and trial, found that the petitioner was never in possession of the suit property and the suit was also dismissed. In the face of such findings, the appellate Court came to the conclusion that there was no substance in the application filed on behalf of the petitioner.

3. In view of the material taken into consideration by the appellate Court, it becomes clear that the view taken by the appellate Court cannot be said to be erroneous because the very finding rendered by the trial Court regarding the petitioner not being in possession of the suit property, is subject matter of appeal before the appellate Court. The appellate Court would certainly apply its mind independently to the claims made by the petitioner when the correctness or otherwise of the judgment and decree of the trial Court is taken up for consideration at the stage of final hearing of the appeal.

4. In view of the above, the present writ petition is found to be without any merit and it is dismissed. The appellate Court is directed to decide the appeal expeditiously and in any case within a period of three months from today. It is made clear that this Court has not made any observations on the merits of the matter and the appellate Court shall decide the appeal independently and on its own merits.

JUDGE