

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

WRIT PETITION NO.7857 OF 2017

Nandu s/o Bhagirath Thakur, Nagpur

-vs-

Vishnu s/o Gopalrao Landage, Nagpur

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

Court's or Judge's Orders.

Shri V. D. Muley, Advocate for petitioner.

CORAM : A. S. CHANDURKAR, J.

DATE : December 06, 2019

Heard learned counsel for the petitioner. Counsel for the respondent was absent on 09/10/2018 and thereafter again on 06/11/2019 and 04/12/2019. Today also there is no appearance on his behalf.

Considering the short issue involved, **Rule.**

2. The petitioner has filed a suit for specific performance of an agreement dated 26/02/2015 for sale of plot No.29. The respondent filed his written statement along with a counter-claim seeking removal of encroachment alleged to have been committed by the petitioner. In that suit the petitioner filed an application for grant of temporary injunction seeking to restrain the respondent from making any construction and from disturbing the possession of the petitioner. The trial court

rejected that application on 13/02/2017. The petitioner therefore filed a miscellaneous appeal. Before the appellate Court it was pointed out that Regular Civil Suit No.07/2017 had been filed by the petitioner's neighbour against the respondent herein and on 27/02/2017 the trial Court had granted temporary injunction seeking to restrain the present respondent from carrying out any type of construction. On that count the miscellaneous appeal preferred by the petitioner was dismissed observing that the injunction as sought was already operating in Regular Civil Suit No.07/2017. Being aggrieved that order is challenged in the present petition.

3. Shri V. D. Muley, learned counsel for the petitioner submits that temporary injunction was granted in Regular Civil Suit No.07/2017 on 27/02/2017. That suit has been withdrawn subsequently on 27/11/2017. As a result the injunction granted therein has ceased to operate. According to the learned counsel injunction in the miscellaneous appeal filed by the petitioner was not granted only on the ground that such injunction was granted in the other suit. It is further submitted that this Court while issuing notice had directed the parties to maintain status quo as regards construction on the suit property by the

defendant.

4. Perusal of the order passed by the appellate Court indicates that injunction has been refused only on the ground that in Regular Civil Suit No.07/2017 an order of temporary injunction was passed. There is no other consideration while dismissing that appeal. It is informed that the present suit is at the stage of recording evidence. Ordinarily the miscellaneous appeal preferred by the petitioner ought to have been directed to be reconsidered since the basis on which it was dismissed which was grant of injunction in Regular Civil Suit No.07/2017 no longer survived. Considering the fact that this Court had directed the parties to maintain status quo as regards the construction which order is operating for a period of almost two years and the respondent has not chosen to contest this writ petition, the following order would serve the ends of justice :

- (i) The proceedings in Special Civil Suit No.521/2016 are expedited.
- (ii) During pendency of that suit the interim order dated 13/12/2017 shall continue to operate but without prejudice to the contentions of the parties.
- (iii) The suit shall be decided on its own merits without being

influenced by any observations made in the orders as passed.

All points are kept open.

The Writ Petition is allowed in aforesaid terms with no order as to costs.

JUDGE