

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6377 OF 2019

Vinay Construction & ors.

.Petitioners

Vs.

Sou. Anita Deepak Sarate & ors.

.Respondents

Mr. R. S. Alange, Advocate, for the Petitioners

Mr. K. Vakeel, Advocate, for the Respondents

CORAM : REVATI MOHITE DERE, J.

DATE : 25.02.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order dated 03.04.2019 passed by the learned District Judge - 8, Solapur in Misc. Civil Appeal No. 131 of 2018, by which the learned Judge allowed the Respondents Appeal and granted certain interim reliefs prayed for by the Respondents in the Application (Exh. 5).

3. The grievance of the learned counsel for the Petitioners is that initially, the Petitioners were granted permission to construct a well on the property in question vide letter dated 27.04.2018. He submits that the said permission / letter has not been dealt with by the Appellate Court, despite the same being brought to the notice of the Appellate

Court. He submits that the matter be remitted back to the trial Court to enable the Appellate Court to consider the Appeal of the Respondents afresh on its own merits by taking into consideration the said document dated 27.04.2018. Learned counsel for the Respondents does not dispute the fact, that the said document dated 27.04.2018 has not been dealt with by the Appellate Court. He, however, submits that the Appellate Court has considered all other factors and has rightly come to the conclusion and granted injunction.

4. Admittedly, there is no discussion on the document dated 27.04.2018 relied upon by the learned counsel for the Petitioners in the impugned order.

5. Considering the same, without going into the merits of the Petition, it would be appropriate to quash and set aside the impugned order dated 03.04.2019 passed by the learned District Judge - 8, Solapur in Misc. Civil Appeal No. 131 of 2018 and remit the matter back to the Appellate Court for fresh consideration. Accordingly, Misc. Civil Appeal No. 131 of 2018 is restored back to its original file. The Appellate Court to hear the parties again on its own merits and decide the Appeal expeditiously.

6. Interim order granted by the Appellate Court on 03.04.2019

to continue till the disposal of the said Misc. Civil Appeal No. 131 of 2018. In the event, the order is adverse to the Respondents, the interim order to continue for a further period of three weeks. All contentions of all parties are kept open.

7. The Respondents are present in Court. **Parties to appear before the Appellate Court on 19.03.2020 at 10.30 a. m.,** after which the Appellate Court will give a date convenient to the Court.

8. Accordingly, the Petition is disposed of.

(REVATI MOHITE DERE, J.)