

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

WRIT PETITION NO. 1781 OF 2020

Nikita Nilesh Rawal through power of attorney holder Javedali Hamidali

vs.

Dipak Prakash Pathak

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

Court's or Judge's orders

Shri. V. B. Bhise, counsel for petitioner.

CORAM : MANISH PITALE J.

DATED : 16/07/2020

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this writ petition the petitioner (original plaintiff) has challenged concurrent orders passed by the two Courts below whereby application for temporary injunction for protection of possession filed by the petitioner, has been rejected.

3. The petitioner has filed a suit for possession, removal of encroachment and injunction against the respondent herein. In this suit the aforesaid application for temporary injunction was moved claiming that since the respondent had conceded in the written statement that he was not in possession, the possession of the petitioner be protected.

4. The Trial Court has considered the documents on record and it has been specifically found in paragraph 11 of the order of the Trial Court dated 03/05/2018 that the question as to whether possession of the defendant is legal or illegal is a matter of full-fledged trial, but once possession has been conceded to the defendant by the petitioner (plaintiff herein) there was no question of any grant of temporary injunction in his favour. This aspect has been considered by the Appellate court while rejecting the appeal filed by the petitioner.

5. It is clear from the documents on record that the suit was itself filed by the petitioner for recovery of possession of suit property. Having stated clearly that possession was sought to be recovered by approaching the Court by filing the suit, it cannot lie in the mouth of the petitioner to turn around and claim that now the petitioner was in possession of the property and that the possession deserved to be protected by way of grant of temporary injunction. The material on record has been correctly appreciated by the two Courts below concurrently and the petitioner has failed to make out any case for invoking writ jurisdiction in the matter.

6. None the less, it would be appropriate that the dispute between parties is resolved at the earliest and therefore, this Court is inclined to accept the request made on behalf of the petitioner that the suit may be directed to be disposed of expeditiously.

7. In view of the above, the writ petition is dismissed. However, the Trial Court is directed to dispose of the suit as expeditiously as possible.

JUDGE

KOLHE/P.A.