

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8984 OF 2021

New Modern Education Society
Registered under the Bombay Public
Trusts Act, having its head office
at : Nasim Cottage, H. No.2-4-109,
Shahganj, Near Shahganj Water Tank
Aurangabad, through its Secretary
Shaikh Imitiyaz Ahmed Gulam Ahmed
Age : 60 years, Occu-Business,
R/o H. No.2-4-109, Shahganj,
Near Shahganj Water Tank
Aurangabad.

.. PETITIONER

VERSUS

Abdul Quadar Gulam Jilani
Age 63 years, Occu : Business
R/o Alamgir Colony, Aurangabad

.. RESPONDENT

...
Shri S.R.Pande, Advocate for the petitioner
Shri Y.V.Kakade, Advocate for the respondent.

...

CORAM : MANGESH S. PATIL, J.
DATE : 26/08/2021

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the Petition is heard finally at the stage of admission.

2] In a Suit filed by the petitioner its application for temporary injunction (Exh.5) was rejected by the learned Civil Judge, Junior Division. The petitioner challenged that order by preferring an

Appeal under Sections 104 read with Order XLIII of the Code of Civil Procedure before the District Court. By the impugned order, the learned District Judge -III has dismissed the appeal.

3] One need not address the submissions made by the learned advocates at bar. A bare perusal of the impugned order would reveal that the learned District Judge-III has abdicated his duty to decide the appeal. The reasonings given in paragraph nos. 6 and 7 for dismissing the appeal are as under :

“ 6] As this is a Miscellaneous civil Appeal preferred being aggrieved with the temporary injunction application rejected by the learned trial court therefore the scope of this court is very limited. This court is require only to see whether the learned trial court has properly appreciated the documentary evidence in accordance with the law and exercise the jurisdiction conferred on him. It appears from the record that the learned trial court has rejected the application [Exh.05].

7] According to defendant he has submitted that he is in possession of the entire suit property. The title of the defendant as owner is not in dispute. Here it appears to me that the trial court has rightly considered the oral and documentary evidence on record. The appellant/plaintiff has not satisfactorily demonstrated before the learned trial court about existence of their right, title and interest in the suit property and obstructions at the hands of defendant. According to me the learned trial court has considered all the aspects involved in this case and passed well reasoned order about the obstruction and injunction. The trial court came to correct conclusion. Therefore there is no reason to

interfere in the impugned order. The appeal is devoid of merits. Hence, points are answered accordingly and pass the following order.

ORDER

1] Appeal is hereby dismissed.
2] The order passed by learned trial court in RCS No.468/20 below Exh-5 is hereby confirmed.”

4] A bare look of the aforementioned paragraphs would demonstrate that the learned Judge has not taken pains to decide the appeal. He has simply subscribed to the order under appeal without even bothering to record reasons, may be precisely, as to what made him to subscribe to the order under challenge before him. Simply saying that the decision was correct is no decision in the eye of law. By no stretch of imagination the impugned order can be said to be a decision on merit.

5] The Writ Petition is allowed. The impugned order is quashed and set aside. The matter is remanded to the Court of the District Judge-III for decision afresh of the Miscellaneous Civil Appeal by extending opportunity to both the sides to argue. The parties shall appear before him on **14/09/2021**. There shall be no need for the Court to issue notice to the parties. Needless to state that the learned Judge would decide the Appeal afresh bearing in mind the observations in this order.

6] The Rule is made absolute.

(MANGESH S. PATIL,J.)