

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

WRIT PETITION NO. 7073 OF 2017

Jagannath Tatyaba Deokate & Ors. ... Petitioners
Vs.
Harishchandra Nivrutti Darade & Ors. ... Respondents

.....

Mr. Tushar Narayan Sonawane for the Petitioners.

Mr. Bhalchandra Sadhu Shinde for the Respondent Nos. 1 and 2.

.....

CORAM: MADHAV J. JAMDAR, J.

DATE : 4th AUGUST, 2021.

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1. Heard Mr. Tushar Sonawane, learned counsel for the Petitioners and Mr. Bhalchandra Shinde, learned counsel for the Respondents.

2. By the impugned order dated 8th March, 2016 Miscellaneous Civil Appeal No. 70 of 2014 filed by the Respondents is allowed. Consequently the order dated 30th August, 2014 passed below Exhibit-5 in R.C.S. No. 29 of 2014 by the learned Joint Civil Judge, Junior Division, Baramati was set aside and Exhibit-5 application was dismissed.

3. Mr. Sonawane, learned counsel appearing for the Petitioners submitted that the learned Trial Court has allowed Exhibit-5 application by order dated 30th August, 2014 and said order was operating till March-2016 and therefore, the learned Appellate Court

should not have set aside the order. He further submitted that the impugned order is perverse.

4. On the other hand, Mr. Bhalchandra Shinde, Advocate representing the Respondents submitted that various factors are taken into consideration by the learned Appellate Court and therefore, no interference at this stage is required.

5. The record shows that Exhibit-5 application in R.C.S. No. 29 of 2014 was allowed by learned Joint Civil Judge, Junior Division, Baramati by order dated 30th August, 2014. The record further shows that on 8th March, 2016, the learned Adhoc District Judge-2, Baramati allowed Miscellaneous Civil Appeal 70 of 2014 by passing the following operative order:-

ORDER

- “1. Appeal is allowed with costs.
2. The order dated 30.8.2014 below Exh. 5 in RCS No.29/2014 passed by Jt. Civil Judge, Jr. Dvn., Baramati is set aside and said application is dismissed with costs. Dictated and pronounced in open court.”

Thus, consequently the order of dismissal of Exhibit-5 application filed in R.C.S. No. 29 of 2014 is in operation for almost about more than five years.

5. Both the counsels agree that no elaborate reasons be given in the light of order which is being passed.

6. As more than five years have lapsed from passing of the impugned order which is interim order, I am refraining from dealing

with merits of the case. However, to protect interest of both the parties, following order is passed:-

ORDER

1. Writ Petition No. 7073 of 2017 is dismissed. However, it is clarified that observations made in order dated 8th March, 2016 passed in Miscellaneous Civil Appeal No. 70 of 2014 are made only for the disposal of injunction application and the learned Trial Court to dispose of R.C.S. No. 29 of 2014 without influenced by any observations made in order dated 8th March, 2016 as well as observations made in this order.
2. It is informed by both the learned counsel that R.C.S. No. 29 of 2014 is kept on 28th August, 2021 for evidence. The learned Civil Judge, Junior Division, Baramati is requested to dispose of R.C.S. No. 29 of 2014 expeditiously.

(MADHAV J. JAMDAR, J.)