

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

WRIT PETITION NO. 10421 OF 2013

Shri Bhalchandra Chandar Kambri	 Petitioner
vs.	
Shri Kashinath Namdeo Solanke & Ors.	 Respondents

Ms. Gouri Godse, for the Petitioner.
Mr. Pradip R. Kadam, for Respondent Nos.2 to 8.

CORAM : MADHAV J. JAMDAR, J.

DATE : 10th AUGUST, 2021

P.C. :

. Heard Ms. Gouri Godse, learned Advocate for the petitioner and Mr. Pradip Kadam, learned Advocate for respondent Nos.2 to 8.

2. The petitioner who is original defendant No.2 has challenged the Order dated 20th August 2013 passed by the learned 4th Joint Civil Judge, Junior Division, Ulhasnagar below Exh.5 in Misc. Application No.7 of 2013.

3. Ms. Gouri Godse, learned Advocate for the petitioner pointed out para No.12 of the impugned order. In said paragraph submission of the respondent Nos.1 to 8 was recorded to the effect that they have not filed the execution petition nor intended to file the same for

execution of the decree. She submitted that on the basis of the said submission, the application at Exh.5 filed in Misc. Application No.7 of 2013 was rejected without considering the merits of the case.

4. Mr. Pradip Kadam, learned Advocate appearing for respondent Nos.2 to 8 submitted that as per his instructions, the property is developed and buildings are constructed.

5. Perusal of the record shows that impugned order rejecting Exh.5 application in Misc. Application No.7 of 2013 was passed on 20th August 2013 and the present petition has been filed on 18th October 2013. In the writ petition, notice was issued by order dated 8th January 2014. However, interim relief was not granted.

6. The petitioner by filing application at Exh.5 in Misc. Application No.7 of 2013 sought relief to the effect that till the hearing and final disposal of the proceedings the decree passed in Regular Civil Suit No.305 of 2001 be stayed. The learned trial Court while rejecting the application at Exh.5 recorded the statement of the respondents that they do not intend to file execution proceeding. Thus, there is no substance in the contention of the petitioner that without considering the merits of the case Exh.5 application is

rejected in view of the said statement recorded by the learned Trial Court. It is clear that the interest of the petitioner was protected by the learned trial Court.

7. In any case, it appears that the nature of the property has changed and buildings are constructed on the property. Therefore, the petitioner is at liberty to file fresh application seeking appropriate interim relief in Misc. Application No.7 of 2013 in view of changed circumstances. If such fresh application is filed, the same be decided in accordance with law.

8. Misc. Application No.7 of 2013 was filed on 11th January 2013 seeking to set aside ex-parte Judgment and Decree dated 17th December 2012 passed in Regular Civil Suit No.305 of 2011. The said Misc. Application is pending for last eight years. Therefore, the concerned learned Civil Judge, Junior Division, Ulhasnagar is requested to dispose of Misc. Application No.7 of 2013 within a period of six months from the date of receipt of copy of this order.

9. All the contentions of the parties are kept open.

10. The Writ Petition is disposed of with no order as to costs.

(MADHAV J. JAMDAR, J.)