

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.945 OF 2022

SHRINIWAS BALKISHAN GUDUR
VERSUS
ABDUL JABBAR ABDUL KARIM

...
Advocate for the Petitioner : Shri Kulkarni Sanket S.

...
CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 19th January, 2022

Per Court:

1. Heard the learned counsel for the petitioner, who seeks a limited relief of continuing the injunction granted in his favour by the Trial Court till the matter on it's remission is reheard by the Trial Court as directed by the District Judge, Jalna.
2. Sequence of events reveals that the petitioner is the plaintiff, who has instituted RCS No.42/2021 before the learned Civil Judge, Junior Division, seeking perpetual injunction. The defendant though served, failed to file the written statement. The plaintiff filed the application below exhibit-5 and on 02.12.2021, by recording the absence of the defendant and recording prima facie case as well as balance of convenience in favour of the petitioner/ plaintiff, the injunction application exhibit-5 came to be granted.

The defendant woke up from the deep slumber and filed Misc. Civil Appeal No.45/2021 before the Appellate Court by invoking Order 43 Rule 1 of the Code of Civil Procedure. The Appellate Court, on perusal of the order passed by the Trial Court, arrived at the conclusion that the Trial Court ought to have granted an opportunity to the defendant before it proceeded with exhibit-5. Resultantly, the Appellate Court quashed and set aside the order passed by the Trial Court and remanded the matter back, for affording an opportunity to the defendant and to decide the injunction application (exhibit-5) afresh. The said order is passed on 15.01.2022, however, the Appellate Court did not issue any direction about the existing injunction in favour of the plaintiff/ petitioner.

Absence of this direction has constrained the petitioner/ plaintiff to approach this Court.

3. I do not see any impediment to grant the relief as prayed for. As a consequence, while the Civil Judge, Junior Division, Jalna re-decide the application exhibit-5 by affording an opportunity to the defendant, till it's decision, the injunction in favour of the petitioner/ plaintiff, as was granted by the Trial Court, shall continue to remain in force. Needless to state that, merely because the injunction is continued, this factor shall not weigh in favour of the petitioner and the Trial Court shall decide the application on it's own merits. If at all, on hearing the defendant, the defendant persuades the Trial Court to come at a different conclusion

other than the one which has been set aside by the Appellate Court, the Trial Court is free to do so.

4. In the wake of the aforesaid direction being limited and restricted only till the date of decision on exhibit-5, this Writ Petition is disposed of.

kps

(SMT. BHARATI H. DANGRE, J.)