

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

WRIT PETITION NO.14102 OF 2021

AURANGABAD GINNING FACTORY THROUGH GPA
VERSUS
SUSHILKUMAR SUKHBIRSINGH CHATWAL AND OTHERS

AND

WRIT PETITION NO.14161 OF 2021

AURANGABAD GINNING FACTORY THROUGH GPA PRAKASH
SITARAM KANDI
VERSUS
RAJU LEKHRAJ TANWANI AND OTHERS

AND

WRIT PETITION NO.14169 OF 2021

AURANGABAD GINNING FACTORY THROUGH GPA PRAKASH
SITARAM KANDI
VERSUS
BALAJI CHANDRABHAN PATIL

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Advocate for the Petitioner/s: Mr. A. P. Sonpethkar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23rd August, 2022

PER COURT :-

1. Since all these matters raise common question of law and fact, they were heard together and are being decided by this common order.
2. The petitioner/s are aggrieved by the order dated 20-02-2020, passed by the learned District Judge-12, Aurangabad in

respective applications i.e. M.C.A. No.70/2019, M.C.A. No.83/2019 and M.C.A. No.84/2019.

3. While deciding the appeals under Section 43 of the Civil Procedure Code, by way of a common judgment, the Appellate Court has passed the following order;

- "1. All the appeals are allowed.*
- 2. The order passed by the Trial Court in Civil M.A. No.219/2008 dated 27.03.2019 is hereby quashed and set-aside. The matter is remanded back to the Trial Court to decide it afresh by restoring to its original number and after giving opportunities to both the sides to lead their respective evidence, if any and to dispose of the matter are the earliest.*
- 3. The parties are directed to appear before the Trial Court on 20.03.2020. The parties and their respective learned advocates are directed to co-operate the Trial Court in early disposal*
- 4. Parties to bear their own costs.*
- 5. A decree be drawn-up accordingly.*
- 6. The original judgment be kept in MCA No.70/2019 and its copies be kept on record in MCA No.83/2019 and 84/2019.*
- 7. R & P sent to the Learned trial court along with the copy of this judgment."*

This order is impugned in the present petitions.

4. Heard the learned Advocate for the petitioners. According to him, the Appellate Court has committed an error in going into the merits of the matters and observing that, the parties need to put

their grievance in respect of the Court Commissioner's report. Unless and until that report is taken into consideration by the Trial Court, it cannot be said that either the appellants are guilty or not guilty of disobedience of the injunction order. This observation is unwarranted and uncalled for according to the learned Advocate for the petitioners. He submits that both the parties have challenged the Commissioner's report in the Trial Court. In that view of the matter, the Appellate Court could not have observed so.

5. Be that as it may, the petitioners are entitled to challenge the Court Commissioner's report before the 8th Joint Civil Judge, Senior Division, Aurangabad (Trial Court), which will be considered by the Trial Court on merit, without being influenced by the observations of the Appellate Court.

6. With this observation, writ petitions are disposed of.

[NITIN B. SURYAWANSHI, J.]

Sameer