

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

WRIT PETITION NO.5169 OF 2022

**BHIKESH NAVNITLAL SARAF AND OTHERS
VERSUS
RAKESH RAMAKANT GUJRATHI AND ANOTHER**

...
Advocate for Petitioners : Mr. Anand P. Bhandari

...

CORAM : MANGESH S. PATIL, J.

DATE : 06.06.2022

PER COURT :

Heard the learned advocate for the petitioners who are the original defendants.

2. By way of application for temporary injunction the respondents plaintiffs prayed for temporary injunction against the petitioners restraining them from creating any obstruction in demolition of the suit property on the premise that it is in a dilapidated condition and needs to be pulled down.

3. During pendency of the application for temporary injunction both the sides filed affidavits. By moving application under Order XIX Rule 2 of the Code of Civil Procedure, the petitioners sought permission to cross-examine the persons who have filed affidavits in support of the respondents. By the order under challenge, the request has been rejected.

4. One need not delve in the question as to whether a party is entitled to call upon the adversary and its witnesses for the purpose of cross-

examining him on the facts stated in the affidavit in support of its stand in the suit. The fact remains that the application for temporary injunction filed by the respondents is to be decided as the touchstone of well recognized principles. Needless to state that the trial court would be obliged to decide it on its own merits even by referring to the affidavits and counter affidavits.

5. What is the condition of the suit property and whether the respondents would be entitled to temporary injunction as claimed is certainly a disputed question of fact and law and will have to be addressed by the trial court at the hearing of the application. A mini trial cannot be permitted to be had at this interim stage. The petitioners would certainly have right to controvert the statements in the affidavits filed on behalf of the respondents by filing counter affidavits and that should be sufficient for the trial court to objectively decide the application for temporary injunction on its own merits.

6. There is no perversity or arbitrariness in the impugned order. The Writ Petition is dismissed *in limine*.

(MANGESH S. PATIL, J.)