

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

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PRANESH
NANDIWADEKAR

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WRIT PETITION NO.5067 OF 2022

Naresh (Narendra) Pundalik Mokal

.. Petitioner

Versus

State of Maharashtra through

Commissioner & Ors.

.. Respondents

Mr.Nitesh V. Bhutekar for the petitioner.

Ms.M.S. Bane, AGP for the respondent 9/State.

CORAM : ROHIT B. DEO, J.

DATE : 7th JUNE 2022

P.C.:-

. The petitioner is the plaintiff, who has brought Regular Civil Suit 155 of 2021 seeking decree of injunction restraining the defendants/respondents 1 to 3 herein from disturbing the peaceful possession qua the subject matter of the suit.

2. The learned trial Court issued notice on the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ("Code") vide order dated 29.11.21 and made the notice returnable on 2.12.2021. It appears that the defendants did not appear and after waiting till 5.25 p.m., the trial Court directed the parties to maintain status-quo till the decision in the suit.

3. The defendants preferred an application seeking recall of the status-quo order on the premise that the defendants could not appear in the Court for just and valid reasons.

4. I need not delve deeper in the reasons which are accepted by the trial Judge, who has allowed the application filed by the defendants and recalled of the status-quo order.

5. In my considered view, this petition can be disposed of by striking a golden mean. While the learned counsel for the petitioner has argued that the application preferred seeking recall of the status-quo order is not maintainable, and that the defendants 1 to 3 ought to have preferred an appeal, I am not inclined to make any positive observation on the said submission. It is well settled that in writ jurisdiction, interference is not warranted only because of some error in the order impugned. I am satisfied that given the reasons put forth for absence, the State Government and its Officers deserve an opportunity to address the Court on the interim relief application on merits.

6. While no interference in the order impugned is necessary to the extent of direction of fresh hearing, order impugned warrants

modification. The learned trial Judge is directed to decide the application under Order XXXIX Rules 1 and 2 of the Code afresh after hearing the parties. Till the decision of the application under Order XXXIX Rules 1 and 2 of the Code and for a period of two weeks after the decision, if the order is adverse to the plaintiff, status-quo shall continue to operate qua possession.

7. The learned trial Judge is requested to dispose of the application Order XXXIX Rules 1 and 2 of the Code within the next six weeks.

8. Petition is disposed of in aforestated terms.

ROHIT B. DEO, J.