

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.59 OF 2023

Nitin Sudam Salok

...Petitioner

Versus

Sumanbai Vitthal Dolas And Others

...Respondents

Mr. M.K. Bhosale h/f Mr. A.M. Salok, Advocate for the petitioner.
Mr. Swapnil Patunkar i/by. Mr. J.P. Legal Associates for
Respondents No. 1 to 4.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JUNE, 2023

ORDER :

1. This petition is filed under Article 226 and 227 of the Constitution of India, for following relief:

“A] By issuing appropriate writ, order, direction or any other appropriate order in the nature of writ, the Hon’ble High Court may be pleased to quash and set aside the impugned orders below Exh. 11,15,28,30, 36 in MCA No. 43/2022 dated 12.09.2022, 21.09.2022, 26.09.2022, 30.09.2022 & 26.12.2022 respectively in MCA/43/2022 passed by learned District Judge, Jalna and order below Exh. 37 dated 31.12.2022 passed in R.C.S. No. 100/2022 dated 31.12.2022 by learned Civil Judge Junior Division, Jafrabad

District Jalna thereby vacating the stay dated 08.09.2022 below Exh. 5 in MCA/43/2022 and directing the removal of shed from suit property with police protection.”

2. Respondents No. 1 to 4/original plaintiffs filed Regular Civil Suit No. 100/2022 for mandatory injunction with application Exhibit-5 for interim stay against petitioner/original defendant No. 3 in respect of the suit property. The Trial Court partly allowed application Exhibit-5 and directed the defendants to remove the tin shade within 30 days. The petitioner challenged this order by filing Miscellaneous Civil Appeal No. 43/2022 before the District Court Jalna along with application Exhibit-5 for stay. Initially, the District Court granted interim stay till next date. By filing applications Exhibit- 15,28,30 and 36, the petitioner prayed for continuation of stay. The Appellate Court discontinued the stay. Thereafter, plaintiffs filed application Exhibit-36 for execution of order passed below Exhibit-5, as the interim stay granted by the Appellate Court was discontinued. Said application is allowed. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for respondents No. 1 to 4. Perused the memo of writ petition, annexures thereto, impugned orders and the

reply filed by respondents No. 1 to 4.

4. Learned advocate for the petitioner assailed the impugned orders contending that final relief is granted by the Trial Court to the respondents by allowing application Exhibit-5. By pointing out prayers in the plaint he submits that, one of the main relief claimed in the plaint for removal of tin shade erected by the defendants is granted by the Trial Court. Therefore, the Trial Court could not have granted final relief by way of interim relief. Further submission is, since the Miscellaneous Civil Appeal No. 43/2022, challenging the order passed below Exhibit-5 is pending before the Appellate Court, the Appellate Court has erred in discontinuing the stay granted vide order dated 08.09.2022. He therefore submits that by setting aside the orders impugned in the present petition, the interim stay granted by order dated 08.09.2022 be continued and the Appellate Court be directed to decide the said application within stipulated time.

5. On the other hand, learned advocate for the respondents vehemently opposed the prayers in the petition by supporting the orders impugned in the present petition. By pointing out averments in the written statement, he submits that, it is the contention of the defendants that they have not

erected the tin shade and therefore he submits that no prejudice is likely to be caused to the petitioner by passing the order below Exhibit-5. He further submits that there is chequered history of litigation between the petitioner and the respondents and second appeal No. 575/2012 is pending in this Court. During the pendency of proceeding, the petitioner has erected tin shade and therefore, the Trial Court was justified in allowing application Exhibit-5.

6. On perusal of averments made by the petitioner in the written statement that petitioner has not erected tin shade in the lands of the plaintiffs and tin shade is erected by him in his own land and the photographs placed on record by the plaintiffs are incorrect, this Court is of the view that if the petitioner has not erected tin shade in the suit property then no prejudice is likely to be caused to the petitioner by grant of injunction by the Trial Court, thereby directing him to remove tin shade erected in the suit property.

7. Taking into consideration the chequered history of litigation between the parties and the fact that the tin shade is allegedly erected during the pendency of proceedings this is an additional reason to sustain the order of the Trial Court passed

below Exhibit-5.

8. Since, application Exhibit-5 is pending before the Appellate Court, this Court does not wish to go into the challenge raised in the writ petition and the writ petition is disposed of with following direction:

9. The Appellate Court shall decide application Exhibit-5 and/or Miscellaneous Civil Appeal No. 43/2022 on merits within a period of four weeks from the date of receipt of writ of this order. Till then, the interim stay granted by the Appellate Court vide order dated 08.09.2022 to continue. Parties to co-operate for expeditious disposal of appeal.

[NITIN B. SURYAWANSHI, J.]