

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

**2 APPEAL FROM ORDER NO.39 OF 2022**

Sunil s/o. Sudamrao Gadade,  
Age: 56 years, Occ. Business,  
R/o. Dev Corner, Shila Vihar Road,  
Savedi, Ahmednagar.

**.. APPELLANT**  
[Orig. Plaintiff]

**VERSUS**

Shailendra s/o. Shivajirao Navle,  
Age: 52 years, Occ. Agri.  
R/o. Shivraj Bungalow, Near Gulmohar  
Road Police Chowky, Gulmohar Road,  
Savedi, Ahmednagar.

**.. RESPONDENT**  
[Orig. Defendant]

...

Mr.P.R.Shinde, Advocate holding for Mr.R.R.Karpe,  
Advocate for the appellant.  
Mr.L.B.Palod, Advocate for the respondent

...

**CORAM : ARUN R. PEDNEKER, J.**

**DATE : 21.06.2023**

**JUDGMENT :**

1] By way of the present Appeal from Order, the appellant is challenging the order dated 28<sup>th</sup> April, 2022 passed by the 3<sup>rd</sup> Joint Civil Judge Senior Division, Ahmednagar, rejecting the application below Exh. 5 in Special Civil Suit No.259 of 2021.

2] The appellant - plaintiff had filed a suit for specific performance of agreement to sell and in the alternative for recovery of earnest money. In the interregnum, the appellant plaintiff has prayed for interim application for temporary injunction in the nature of injunction from creating third party rights in the suit property or alienating the suit property till the disposal of the suit. The said interim application was rejected by the trial Court. Against which, the present Appeal from Order is filed.

3] This Court, by order dated 13<sup>th</sup> July, 2022, had granted interim stay in the present Appeal from Order in terms of prayer clause B-1 of the Civil Application No.10093 of 2022, which reads as under :

*1] Leave to add prayer clause 'B-1'.  
Amendment to be carried out forthwith.*

*2] Heard the learned counsel for the  
applicant.*

*3] The learned counsel for the applicant submits that the applicant-appellant has impugned order dated 28<sup>th</sup> April, 2022 passed by the learned 3<sup>rd</sup> Joint Civil Judge Senior Division, Ahmednagar on an application below Exh.5 in Special Civil Suit No. 259 of 2021. The learned counsel for the applicant further submits that the learned trial Court has agreed that there was an agreement between the applicant and respondent but the learned trial Court has rejected the prayer of the application not to create third party interest by the impugned order.*

*4] Perused the order passed by the learned trial Court. The learned trial Court has passed the reasoned order. In the said order, the learned trial Court has observed that there was an agreement between the applicant and the respondent. The prayer of the applicant is not to create third party interest, it is rejected hence ad-interim relief is granted in terms of prayer clause-B-1 of the Civil Application.*

The aforesaid interim relief has continued till the date. The record and proceeding has also been submitted to this Court. Although this Court has directed to proceed further in the suit and since the record and proceeding is kept in this Court, the trial court has not proceeded further. There is no point in keeping the matter

pending for long time as the interim relief is granted by this Court in the matter.

4] In view of the same, the trial Court is directed to decide the Special Civil Suit No.259 of 2021 within a period of one year from the date of receipt of this order. The record and proceedings is remitted back to the trial Court and interim relief granted earlier on 13<sup>th</sup> July, 2022 is continued till the disposal of the suit pending before the trial Court.

5] The parties are directed to co-operate with the trial Court in deciding the pending suit.

6] In view of the same, the present Appeal from order is disposed of.

**[ARUN R. PEDNEKER]**  
**JUDGE**

DDC