

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11387 OF 2023

Subhash Sitaram Patil and others Petitioners
Versus
Gopal Sitaram Patil and another Respondents

.....
Mr. M.M. Patil (Beedkar), Advocate for the Petitioners
Mr. B.R. Kedar, Advocate for Respondent No.1
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th September, 2023

ORDER :

1. Petitioner is aggrieved by the order passed by learned District Judge-2, Bhusawal, thereby allowing the appeal filed by respondent No.1 and setting aside the findings recorded by the Trial Court, while rejecting the application for temporary injunction.

2. Having heard the learned advocate for petitioners and the learned advocate for respondent No.1 and upon perusal of writ petition memo, annexures thereto and the impugned order, this Court is of the view that no interference is called for in the order impugned in the present petition.

3. The petitioners have assailed the impugned order on the ground that the Appellate Court has exercised advisory jurisdiction, which is not available to it in terms of Section 107 of the Code of Civil Procedure. The amendment for which liberty is granted to the plaintiff to amend the suit is time barred, and therefore, no liberty should have granted by the Appellate Court in the facts of the present case.

4. These arguments are devoid of any merit, as sub clause (2) of Section 107 of the Code of Civil Procedure confers same powers and jurisdiction of the Court of original jurisdiction on the Appellate Court. Therefore, the liberty granted by the Appellate Court cannot be termed as advisory jurisdiction exercised by the Appellate Court. The petitioners are entitled to oppose the amendment application, if any, by the plaintiff on merits. There is no illegality or perversity in the order impugned in this petition. No case is made out by the petitioners to exercise extraordinary writ jurisdiction. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane