

SA Pathan

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

WRIT PETITION NO.5623 OF 2022

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Jayant Vishvanath Budhavantrao

... Petitioner

V/s.

Maruti Dashrath Adhatrao & Ors.

... Respondents

Mr. Ajay A Joshi a/w Ms Pranali Raikar, for the
Petitioner.

Mr. Sachinkumar Rajepandhare, for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 24, 2023

P.C.:

1. Order impugned rejects application under Order 41 Rule 5 of the Code of Civil Procedure, 1908, seeking stay of decree for injunction in a counter claim filed by defendant No.3.
2. The petitioner is an original plaintiff who filed suit for injunction against the defendant not to disturb in possession of suit property. In the said suit defendant No.3 filed counter claim. The Trial Court dismissed the suit for injunction. The Trial Court also decreed the counter claim of defendant No.3.
3. Aggrieved thereby, the plaintiff filed appeal challenging both the decrees.
4. In the said appeal, the Appellate Court refused to exercise

power under Order 41 Rule 5 of the Code of Civil Procedure, 1908.

5. The findings recorded by the Appellate Court are prima facie findings. It appears that the order of injunction granted by the Trial Court is in force from 28 March 2019. Therefore, it would be in the interest of justice that the Appellate Court be directed to decide the appeal within four months from today. Such order would meet ends of justice.

6. The Appellate Court to decide the appeal within four months from today uninfluenced by the observations made on an application under Order 41 Rule 5 of the Code of Civil Procedure, 1908.

7. The writ petition stands disposed of accordingly. No costs.

(AMIT BORKAR, J.)