

SA Pathan

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

WRIT PETITION NO.11463 OF 2023

Ashok Krishna Sabale

... Petitioner

V/s.

Ratan Raghu Sawant & Anr

... Respondents

Mr. Prabhakar M Jadhav, for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 11, 2023

PC.:

1. Challenge in this writ petition under Article 227 of the Constitution of India is to the order passed by the Trial Court granting police protection to defendant No.2 in exercise power under Section 151 of the Code of Civil Procedure, 1908.
2. The Trial Court by order dated 6 January 2021, restrained the plaintiff from disturbing possession of defendant No.2 over the suit property. The petitioner filed miscellaneous civil appeal before the Appellate Court along with the said appeal. The petitioner has filed application for stay.
3. According to the petitioner, neither any order is passed on the stay application nor miscellaneous civil appeal is decided; therefore, according to him, the Trial Court was not justified for passing order of police protection. It is well settled that, the Civil

Court has power under Section 151 of the Code of Civil Procedure, 1908 to pass an order of police protection in furtherance of order of injunction granted by the Civil Court under Order 39, Rule 1 of the Code of Civil Procedure, 1908 whenever there is an apprehension of law and order, the Court has power to pass such order under Section 151 of the Civil Procedure Code, 1908.

4. It is well settled that the Civil Court has power to grant police protection under section 151 of the Civil Procedure Code, 1908.

5. Merely, because of the Non Cognizable (NC) filed by the petitioner is after three days of filing of present application before the Trial Court, the subjective satisfaction recorded by the Trial Court about apprehension of commission of public order appears to be passed on the material produced by the defendant No.2 cannot be faulted.

6. Exercised of discretion by the Trial Court cannot be termed as perverse nor there is any error apparent in the face of order for calling under Article 227 of the Constitution of India. However, it would be in the interest of justice to direct the Appellate Court to decide miscellaneous civil appeal filed by the petitioner bearing No.2 of 2021 as expeditiously as possible and in any case within three months from today.

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

(AMIT BORKAR, J.)