

Anand

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

WRIT PETITION NO. 929 OF 2023

Dattatraya Balkrishna Deshmukh & ors.

.Petitioners

**ANAND
SUDHAKAR
SUDAME**

Vs.

Grampanchayat Devlooli Budruk, Post – Rasayani,
Taluka – Panvel, District – Raigad & ors.

.Respondents

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Mr. Rohit D. Joshi, Advocate, for the Petitioners

Mr. Drupad S. Patil, Advocate, for the Respondents

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 18.7.2023

P. C.

. The challenge in the Petition is to the order dated 24.11.2022 passed by learned Jt. C. J. S. D., Panvel rejecting the Petitioners' application under Order XXXIX, Rule 11 of the Civil Procedure Code (Bombay amendment) to strike off the defence of Respondent Nos. 1 to 3.

2. Heard learned counsel for the Petitioners and learned counsel for the Respondents.

3. Learned counsel appearing for the Petitioners submits that the application in question came to be filed as inspite of order of status-quo passed by the trial Court pending

the hearing and final disposal of the Exh. 5 application, the same has been breached by the Respondents. He has invited attention of this Court to the order of status-quo which was passed on 03.02.2022 which was continued till 03.03.2022. He would further submit that perusal of the order dated 03.03.2022 indicates that the order was noted by the junior of the Advocate for the Respondents and as such, it cannot be said that they were unaware of the order of status-quo.

4. Per contra, learned counsel appearing for the Respondents points out that the alleged breach is felicitation function conducted in which the Advocate for Respondents was felicitated as the Respondents were informed that court order was passed in favour of Respondents. He would contend that the Respondents were unaware of status-quo order. He would further point out that it is the Petitioners' own statement before the police authority recorded on 11.05.2022 that upon being informed about the order of status-quo, the Respondents have stopped the work which was being carried out.

5. Considered the submissions.

6. It is not in dispute that there was an order of status-quo passed by the trial Court. The claim of the Petitioners is that there is a breach of the order of status-quo and the defence taken is that the Respondents were not informed about the same by their lawyer. It is not the claim of the Respondents that there was no order of status-quo and the defence raised is that same was not informed to them by their lawyer. Added to this, immediately upon learning about the same, the Respondents which are statutory authorities, have immediately stopped the work in question on the property. The photographs placed on record indicate that there was felicitation function of the counsel for the Respondents which was organised. The fact remains that there is a separate application filed under Order XXXIX, Rule 2A which is pending for adjudication. It is also undisputed position that Exh. 5 application has been allowed by passing restraining order as against the Respondents. The application under Order XXXIX, Rule 11 seeks drastic order which will deprive the Respondents, who are statutory authorities from contesting the matter on merits. It cannot be said to be improbable that the order of status-quo was not communicated to the Respondents – statutory authorities by their lawyer. The fact that immediately upon

learning about the same, the statutory authorities have stopped the work in question, lends credibility of the defence, which has been raised.

7. In view of the above, in my mind, drastic measure of striking of the defence ought not to be passed in the present case and as such, the trial Court has rightly passed the impugned order dismissing the Application.

8. The Petition, being devoid of merits stands dismissed.

9. Needless to clarify that the application under Order XXXIX, Rule 2A of the CPC will be decided by the trial Court on it's own merits and uninfluenced by the observations made here.

(SHARMILA U. DESHMUKH, J.)