

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 6200 of 2022

Girijashankar S/o Maniramsingh Jatpele

Versus

Premkumar S/o Maniramsingh Jatpele

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.N.Vastani, Advocate for the petitioner.

Shri A.K.Waghmare, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 24th APRIL, 2023.

In this writ petition, the judgment and order dated 12th September, 2023 passed by the Ad-hoc District Judge-2, Gondia in Miscellaneous Civil Appeal No. 7 of 2022, allowing the appeal and setting aside the order below Exhibit 5 dated 15th January, 2022 passed in Regular Civil Suit No. 298 of 2021, is under challenge.

2. The petitioner is the original plaintiff who filed the suit for permanent injunction against the respondent, from making the construction over the suit land. The petitioner has filed an application Exhibit 5 for temporary injunction restraining the respondent from carrying out the construction over the suit property. The said application came to be allowed vide order dated 15th January, 2022.

3. Feeling aggrieved by the same, the respondent preferred a Miscellaneous Civil Appeal No. 7 of 2022, which came to be allowed vide impugned judgment and order dated 12th September, 2022 by setting aside the order below Exhibit 5 dated 15th January, 2022 passed by the trial Court. Hence, this petition.

4. During the pendency of the present writ petition, the respondent has filed an undertaking dated 17th April, 2023 to the following effect:

“That, the respondent-sole hereby undertakes that the construction of the building permitted by this Hon’ble Court would be subject to decision in RCS No. 298/2021 pending on the file of learned Civil Judge, Junior Division, Gondia and in the event of failure of the present respondent sole in the said suit, the respondent sole will demolish the construction on his own, constructed, as per consent deed dated 29.4.2017 on the allotted portion of 1000 square meter of Survey No. 311, Mouza Marartoli, Tah & Dist. Gondia and approved by the Gram Panchayat Resolution.”

5. After going through the contents of the undertaking, I am of the opinion that the undertaking given by the respondent protects the interest of the petitioner and as such I am not inclined to interfere with the impugned judgment and order. Accordingly, the writ petition is disposed of.

[ANIL S. KILOR, J.]

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