

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

WRIT PETITION NO.8438 OF 2022

(ABDUL RAJIK ABDUL RAJJAK...VS.. THE COMMISSIONER, MUNICIPAL CORPORATION, AKOLA &
OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.P.Bhuibhar, Adv. h/f. Shri A.M.Tirukh, Adv. for Petitioner.
Shri C.A.Joshi, Advocate for Respondent No.3.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 09, 2023.

1. In this case the learned 6th Joint Civil Judge Junior Division, Akola and learned District Judge, Akola both have rejected the application (Exh.5) for grant of temporary injunction and denied the prayer of the petitioner to restrain the Municipal Corporation from disturbing the possession of the petitioner and from demolishing his illegal structure.

2. The learned Appellate Court, while upholding the order of the trial Court, has observed that the petitioner failed to file documents showing ownership of the construction on the suit property or permission granted by the authority for such construction. The lower appellate Court has further observed that even the petitioner has failed to prove that he is running business in the suit premises from last 13 years and therefore, the Court has observed that the petitioner/ plaintiff has failed to establish the *prima-facie* case and further failed to

establish that if the temporary injunction is not granted the appellant/petitioner would suffer irreparable loss or balance of convenience is in his favour.

3. The Hon'ble Supreme Court of India in the case of *Esha Ekta Apartments CHS Ltd..vs.. Municipal Corpn. of Mumbai*, reported in (2012) 4 SCC 689, has held thus :

"19. We have considered the respective submissions and carefully scrutinized the record. The scope of the appellate Court's power to interfere with an interim order passed by the Court of first instance has been considered by this Court in several cases. In Wander Ltd. v. Antox India (P) Ltd., the Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondent's prayer for interim relief. This Court set aside the order of the Division Bench and made the following observations:

"14. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess

the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

4. Thus, in the light of the above observations of the Hon'ble Supreme Court of India, as I do not find any perversity or error in the order passed by both the Courts below, I am not inclined to interfere with the same.

Accordingly, the writ petition is **dismissed**. No order as to costs.

JUDGE

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