



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**931 APPEAL FROM ORDER NO. 63 OF 2023
WITH APPEAL FROM ORDER NO. 64 OF 2023
WITH CIVIL APPLICATION NO. 13543 OF 2023
IN AO/64/2023 WITH CIVIL APPLICATION NO. 13542
OF 2023 IN AO/63/2023**

**DHANRAJ KAVARLAL JAIN
VERSUS**

**KRUSHI UTPNA BAZAR SAMITI SHAHADA (A.P.M.C.)
ANOTHER**

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Advocate for the Petitioner : Mr. P. N. Jain

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : July 23, 2024**

ORDER:-

1. Heard the learned counsel for the appellants, in both the appeals.
2. The respondents in both these appeals despite service remained absent.
3. These appeals are filed against the orders dated 23.10.2023, in Regular Civil Appeals Nos. 13 and 14 of 2023 whereby the learned First Appellate Court i.e. Ad-Hoc District Judge-1 Shahada, has refused to grant temporary injunction in favour of the present appellants/original plaintiffs in respect of suit properties which are their respective Godowns.
4. The record shows that the appellants/plaintiffs had filed two suits seeking injunction against the present

respondents/defendants for not to dispossess them without following due procedure of law and specially during the subsistence of their contract with defendant No.1 Agricultural Produce Market Committee, (A.P.M.C.) Shahada District Nandurbar which is up to 2037.

5. However, the learned trial Court i.e. learned Joint Civil Judge, Junior Division, Shahada, dismissed both the suits of the present appellants vide judgment and order dated 23.02.2023 despite holding possession of the plaintiffs over the suit godowns. It is also observed by the learned trial Court that the respondents/defendants had obstructed to enjoyment of the appellants over the suit godowns.

6. It appears that the learned trial Court has dismissed the suits of the appellants only on the ground that there were certain clouding circumstances in respect of title of appellants/plaintiffs over the suit godowns.

7. It is extremely important to note that the interim protection was running in favour of the appellants/plaintiffs during the pendency of the suit. Further, even after dismissal of the suit and on filing of appeals by the plaintiffs till decision of Exh. 5 applications, there was Ad interim protection running in favour of the appellants. Even this Court has also protected the possession of the present appellants during the

pendency of these appeals under order dated 08.11.2023.

8. The learned First Appellate Court has refused the applications at Exh.5 of the appellants by observing that they could not establish the *prima faice* case in their favour. However, such approach of the learned First Appellate Court *prima facie* appears erroneous, since it amounts to decision of appeal at an interim stage wherein only injunction is sought. The learned First Appellate Court should have decided the appeals itself finally by continuing the earlier interim injunctions in favour of the appellants.

9. Considering these aspects both the appeals are hereby allowed and the impugned judgment and orders both dated 23.10.2023 in Regular Civil Appeal No. 13 of 2023 and 14 of 2023 respectively are hereby set-aside. The learned First Appellate Court shall decide both the appeals finally and on its own merit as expeditiously as possible.

10. In the meantime, the Ad interim relief of injunction granted by learned First Appellate Court in the aforesaid appeals dated 3rd March 2023 to continue.

11. The appeals are accordingly disposed of along with pending Civil Applications.

(SANDIPKUMAR C. MORE, J.)