

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3040 OF 2024

Sanjay Ganpati Pawar .. Petitioner
Versus
Kisan Pandurang Gholap & Anr. .. Respondents

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• Mr. Mayank Tripathi i/by Mr. Bhushan Walimbe for Petitioner

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 8, 2024

P. C.:

1. Heard Mr. Tripathi, learned Advocate for Petitioner.
2. Present Writ Petition takes exception to the order dated 18.10.2023 passed by learned Trial Court in Application below Exh. 33 in SCS No. 62/2022 filed by Defendants under O. VIII, R. 6-A r/w Section 151 of the CPC seeking leave of the Court to file Counterclaim for re-conveyance of the suit property in view of the mortgage deed executed by Defendants in respect of the suit property. The stage at which this Application is filed is crucial. After pleadings of the parties were completed and issues were framed, the present Application has been filed. It is pertinent to note that Exh. 5 has been allowed by the learned Trial Court and upheld by the learned District Court in the present case and those detailed substantial orders have been placed in the present Writ Petition. *Prima facie* after reading the averments

made in the written statement which is at Exh. F, page Nos. 90-97 of the written statement, it is seen that the Defendants had never ever stated or referred to the suit property having been mortgaged and in that view of the matter, despite the fact that the plea of the Defendants is a completely contrary plea, whether Defendants can be allowed to raise the said plea is the question argued by the learned Advocate apart from the issue of limitation.

3. An arguable case is made out for issuance of notice and stay of the proceedings.

4. Issue notice to the Respondents made returnable on 22.03.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

5. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next

adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

6. In the meanwhile, impugned order dated 18.10.2023 as also SCS No. 62/2022 shall stand stayed in the meanwhile.

7. Stand over to **22nd March, 2024.**

Amberkar

[MILIND N. JADHAV, J.]

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