

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5219 OF 2024

Ankush Genu Dhankude & Ors.

.. Petitioners

Versus

Lilabai Dattoba Dhankude & Ors.

.. Respondents

.....

- Mr. Anil Sakhare, Senior Advocate i/by Mr. Kalpesh Patil for Petitioners
- Advocates for Respondents – Appearance not given.

.....

CORAM : MILIND N. JADHAV, J.

DATE : MAY 07, 2024

P. C.:

1. Heard learned Advocates appearing for the parties.
2. On 19.04.2024, this Court passed the following order:-

“1. Heard Mr. Sakhare, learned Senior Advocate for Petitioners and Mr. Damle, learned Senior Advocate for Respondents.

2. Order dated 29.01.2024 impugned in the present Writ Petition is an interim order of status quo passed by the learned District Court in Misc. Civil Appeal No. 292/2023 which upsets the order passed below Exh. 5 passed by the learned Trial Court. SCS No. 1460/2018 is filed in the year 2018. Suit is for partition and certain declarations. Defendants applied for development of the property in their possession through the developer. The developer is a party to the Suit proceedings. Considering the fact that the learned Trial Court had refused Exh. 5 Application of the Plaintiffs, in that view of the matter, Defendants proceeded with development. However the District Court passed the order of status quo and prima facie it is seen that the construction of the Defendants which had progressed is halted which is detrimental to the Defendants..

3. Though Mr. Sakhare, learned Senior Advocate would submit that a substantial amount of almost Rs. 6 Crores has been incurred as expenditures by the Defendants for development uptill now, putting an embargo on development after it has commenced would be distressing for the Defendants. Mr. Sakhare would go to the extent of even stating that Defendants be permitted to carry out construction on the suit property and he would be ready and willing to file undertaking that Defendants would abide by the ultimate decision in the Suit proceedings.

4. *After hearing Mr. Damle, learned Senior Advocate for the Appellants and more specifically considering the fact that Misc. Civil Appeal has not been determined as yet and the challenge is to an ad-interim order, I need not adjudicate on merits. Mr. Damle would inform the Court that submissions on behalf of Appellants have already been completed in MCA proceedings. In that view of the matter, learned District Court is directed by this Court to hear the parties in Misc. Civil Appeal No. 292/2023 and pass a reasoned speaking order within a period of two weeks from today.*

5. *This Court after hearing both learned Senior Advocates would like to make one more observation. Learned District Court shall not be influenced by any of the observations and findings recorded in the order dated 29.01.2024 of stauts quo so as to influence its decision while finally deciding the Misc. Civil Appeal. The decision in the MCA shall be passed on its own merits after hearing the parties strictly in accordance with law and the pleadings qua the decision passed by the learned Trial Court below Exh. 5. Needless to state that all contentions of both the parties to agitate in MCA proceedings are expressly kept open.*

6. *Parties shall appear before the learned District Court along with a server copy of this order to determine the schedule of hearing of the MCA.*

7. *Copy of the order passed in MCA shall be placed before this Court on 07.05.2024 so as to consider it further.*

8. *Stand over to 7th May, 2024 at 2:30 p.m.”*

3. The sentence appearing in 7th line of paragraph No. 2 of order dated 19.04.2024 *“The developer is a party to the Suit proceedings”* stands deleted by consent of the parties. Correction to that effect shall be carried out in the said order and corrected order be uploaded again. Rest of the order remains as it is.

4. Mr. Sakhare has placed on record the Chart showing dates and events in respect of the matter having been proceeded with by the learned Trial Court between 19.04.2024 and 06.05.2024 and would submit that the order dated 19.04.2024 has not been complied with. The said Chart is taken on record and marked “X” for identification.

For convenience and reference, the said Chart is scanned and reproduced herein under:-

"T" *in fact* *7/5/2024*

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in fact
7/5/2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO: 5219 OF 2024

DIST: PUNE

Ankush Genu Dhankude and Ors Petitioners

Versus

Lilabai Dattoaba Dhankude and Ors ... Respondents

CHART

SR NO	DATE	EVENT
1.	19.04.2024	Order passed by this Hon'ble Court. Ld District Court directed to decide MCA within a period of two weeks. Ld District Court directed to place before Hon'ble High Court the copy of the order passed in MCA on 07.05.2024.
2.	22.04.2024	Parties appear before District Court, Pune
3.	23.04.2024	Oral arguments by present Appellants
4.	26.04.2024	Written Arguments filed by present Appellants
5.	28.04.2024	Respondent filed reply
6.	03.05.2024	For orders
7.	06.05.2024	For orders Adjourned kept on 08.05.2024.

5. In view of the above, learned Trial Court is directed to take cognizance of this order and ensure that the order is passed immediately failing which this Court will have to pass appropriate orders.
6. Server copy of this order shall be placed before the learned Trial Court tomorrow i.e. on 08.05.2024 by the parties.
7. Stand over to **9th May, 2024 at 2:30 p.m.** for compliance.

Amberkar

[MILIND N. JADHAV, J.]

Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2024.05.07
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+0530