

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.7414 OF 2021
WITH
INTERIM APPLICATION (STAMP) NO.20728 OF 2021**

1. Snehankita Pankaj Pawar
Age-37 Yrs., Occ. Business,
2. Pankaj Ashok Pawar,
Age- 44 Yrs., Occ. Business,
Both R/o. Flat No.T-3, Yashlaksmi
Apartments, Bhaji Mandai, 12,
Bhavani Peth, Satara. ..Petitioners

Versus

1. Shirkant shivaji Todkar,
Age- 52 Yrs., Occ. Business,
R/o.- Kokil Bungalow, Plot,
No.14, Sangam nagar, Satara.
2. Ld. Regional Officer
Maharashtra Industrial
Development Corporation
Nagala Park, Kolhapur.
3. Ld. Area Manager,
Maharashtra Industrial
Development Corporation
Satar Sub-Division, Satara,
Tal. And Dist. Satara. ..Respondents

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Mr. Manmath Athalye, Advocate for Petitioners.

Mr. Nikhil Wadikar i/by Mr. Nandu Pawar, Advocate for Respondent No.1.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 24th NOVEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioners impugns order dated 04.10.2021, passed by Civil Judge Senior Division, Satara below Exhibit-5 in Regular Civil Suit

No.335/2021, by which return of plaint has been ordered for compliance of provisions under Section 80 of Code of Civil Procedure (for short 'CPC').

3. The petitioners instituted Regular Civil Suit No.335/2021 seeking relief of permanent injunction from alienating and creating third party interest in suit property. Since petitioners wanted to have urgent relief, they moved an application for waiver of notice under Section 80 of CPC. The Civil Judge Senior Division, Satara allowed petitioners' application vide order dated 02.09.2021 and waived notice under Section 80 of CPC.

4. The petitioners' application for grant of interim relief below Exhibit-5 was taken up for hearing. Ultimately, on 04.10.2021 application Exhibit-5 came to be rejected. While rejecting said application learned Judge observed that since petitioners are found not entitled for temporary injunction, leave granted under Section 80 of CPC stands canceled and directed return of plaint for compliance of provisions of Section 80(1) of CPC.

5. Mr. Manmath Athalye, learned Advocate appearing for petitioners submits that once leave under Section 80 of CPC is granted, it cannot be canceled only on ground of refusal of interim injunction on its merit. He would submit that if defendants want to challenge leave granted under Section 80 of CPC, such objection needs to be raised in

written statement or such order can be challenged in Revision. However, there is no provision for withdrawing leave after decision on application for injunction. In support of his contentions he relies upon observations of this Court in case of ***Chandrashekhar Purushottam Rathi Vs. State of Maharashtra and another***¹, observations of Punjab and Haryana High Court in cases of ***State of Punjab Vs. Karnail Singh***² and ***Zile Singh & Ors. Vs. Tara Chand & Ors.***³.

6. Perusal of aforesaid judgment would show that once leave is granted under Section 80 of CPC observing presence of grounds for waiver of notice, it is not open for Court to revisit the same or direct return of plaint after deciding application for interim injunction. The Punjab and Haryana High Court in case of ***Karnail Singh*** (supra) observed in paragraph no.6 as under:

“6. It is admitted position that on 26.4.2002, the Civil Judge has granted exemption to the plaintiff-respondent from issuing any notice under Section 80 and his suit was entertained. However, the prayer of the plaintiff-respondent for issuance of interim relief was declined on 16.5.2002. The defendant-petitioner then filed an application for return of the plaint. Therefore, no review of the order dated 26.4.2002 would be possible because if such a proposition is accepted then in cases where exemption from issuing notice under Section 80 has been granted then on the failure of application for interim relief the exemption would be revoked, plaint has to be returned and the suit has to be refiled after complying with the provisions of Section 80 of the Code.”

7. The aforesaid observations directly applies to facts of present case.

1 2002 (2) Mh.L.J. 181.

2 2004 (1) LJR 227.

3 2010 (3) CivCC 179.

8. Perusal of impugned order would show that learned Judge observed that petitioners failed to make out case for grant of interim relief and, therefore, plaint needs to be returned for compliance of Section 80 of CPC. However, once by order dated 02.09.2021 petitioners were permitted to institute suit with waiver of notice under Section 80 of CPC, there was no reason for return of plaint after rejection of application for grant of interim relief. Apparently, order impugned is liable to be quashed and set aside to that extent. It is apposite to note here that learned Advocate appearing for petitioners have not claimed any relief against rejection of application for temporary injunction in this petition. Hence, following order:

ORDER

- a. Writ Petition is partly allowed in terms of prayer Clauses (a) and (b).
- b. The impugned order dated 04.10.2021 is quashed and set aside to the extent of operative clause no.(2) only.
- c. Rule made absolute in above terms.
- d. In view of disposal of Writ Petition, pending Interim Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE