

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12501 OF 2023

Smt. Lilawati Dattatraya Suryavanshi

...Petitioner

Versus

Uttam Babu Suryavanshi

...Respondent

Mr. Shekhar Jagtap i/b. J. Shekhar Associates for the Petitioner.

Mr. Satyajeet A. Rajeshirke for the Respondent.

CORAM : M. M. SATHAYE, J.

DATED : 21st FEBRUARY 2025

P.C.:

1. Heard learned counsel for the parties. Perused the records.
2. The Petitioner is defendant and Respondent is Plaintiff. By the present Petition, the Petitioner is challenging the order dated 23/08/2023 passed by the District Judge, Sangli in Misc. Civil Appeal No. 43 of 2023. By the said impugned order, Order dated 31/01/2023 passed by the Trial Court below Exh. 5 is set aside and the said application filed by the Respondent for interim injunction not to disturb the use of suit way, is allowed and the Petitioner is restrained from creating any obstruction or erecting any construction to block suit way. Apart from this, under clause (4) of the operative part of impugned order, an interim mandatory injunction/direction is granted against the Petitioner, to remove the compound wall or part thereof, which is creating obstruction to the suit way. The Appellate Court

prima facie found suit way existing.

3. Learned Counsel for the Petitioner, apart from assailing the impugned order on the merits of the case, submitted that interim mandatory direction could not have been granted by the Appellate Court, when the Application Exhibit-5 was restricted to prohibitive injunction prayer, during the pendency of the suit.

4. Perusal of the Application Exhibit-5 shows that what was prayed was only interim injunction (prohibitive) restraining the Petitioner from creating obstruction on the suit way. There was no prayer for the interim mandatory direction.

5. On the other hand, learned Counsel for the Respondent submitted that during the pendency of the Application Exhibit-5, there was ad-interim injunction restraining the Petitioner from creating obstruction, however, after the Trial Court refused the injunction under its order dated 31/01/2023, the Petitioner completed the construction of compound wall during status quo order and therefore the Appellate Court has rightly granted interim mandatory injunction.

6. Indeed, perusal of paragraph nos. 18 and 19 of the impugned order indicates that such *status quo* was existing during pendency of the miscellaneous appeal and the Petitioner has completed the construction of the compound wall during the pendency of such status quo order. It appears that the Appellate Court considered the prayer of interim mandatory injunction in the light of changed circumstances brought about by the Petitioner during status quo.

7. Having heard learned Counsel for both the sides and having perused the records, I find that the Appellate Court has exercised discretion based on the observations in the Commissioner's report, which indicated that apparently the Respondent/Plaintiff does not seem to have any access to his house. The Appellate Court has coupled this finding in the Commissioner's report with the completion of construction of compound wall during the status quo order and has found favour with the Respondent's prayer for interim mandatory injunction.

8. In the aforesaid facts and circumstances, so far as Clauses (1) to (3) of the operative part of the impugned order are concerned which grants interim injunction restraining the Petitioner from the creating obstruction in the suit way, no fault can be found. The said finding is based on the material available on record and there is no reason to interfere with the same.

9. However, so far as the interim mandatory injunction granted under the impugned order is concerned, it is apparently granted without any such prayer existing under Exh. 5 and without any opportunity to Petitioner to file reply thereto. Therefore I am inclined to interfere in that regard.

10. Accordingly clause (4) of the operative part of the impugned order dated 23.08.2023 is quashed and set aside. Rest of the impugned order is confirmed.

11. However, in view the fact that the Petitioner has completed the construction during the pendency of the status quo, the Respondent shall be at liberty to file separate appropriate application, if so advised, seeking interim mandatory direction for removal part of the compound wall so as to make the suit-way available during the pendency of the suit. Needless to

mention that the Petitioner will be at liberty to file reply to such Application and the same will be decided on its own merits in accordance with law. Other steps taken by the Respondent for breach of order of status quo or injunction, shall continue unaffected.

12. The petition is partly allowed and disposed of in above terms. No order as to costs.

All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)