

Shabnoor

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

WRIT PETITION NO. 1380 OF 2024

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Shukri Abdul Qadir Mohammed Saleh ... Petitioner

V/s.

Marta George
(Widow of Nelson K.George) & Ors. ... Respondents

Mr. Girish S. Godbole, Sr. Advocate i/by Mr. Rohit D.
Joshi, for petitioner.

Ms. Chaitrali Deshmukh for respondent Nos.1 to 5.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 24, 2025

P.C.:

1. Challenge in this petition is to the order dated 27th October 2023 passed by the Civil Judge, Junior Division, Ulhasnagar, below application Exhibit 63 in Regular Civil Suit No. 176 of 2018, whereby the Trial Court directed the petitioner to re-deposit the compensation amount withdrawn by the petitioner on 28th January 2019. The challenge is primarily on the ground that the Trial Court failed to appreciate the petitioner's contention regarding the absence of proper service of the order of injunction and the legal implications of the injunction order on the withdrawal of the compensation amount.

2. On perusal of the impugned order, it appears that the Trial Court relied upon the order dated 10th January 2019 passed by

the Appellate Court in Miscellaneous Civil Appeal No. 1 of 2019, which restrained the petitioner from receiving the compensation amount in respect of the disputed property. Without recording any specific findings on the service of the said order of injunction upon the petitioner or the existence of the injunction order at the time of withdrawal of the compensation amount, the Trial Court directed the petitioner to re-deposit the said amount. Such reliance, without determining these crucial aspects, renders the impugned order legally unsustainable.

3. In such an application, the scope of inquiry must include a determination of two essential aspects: (i) whether the order of injunction passed by the Appellate Court was duly served upon the petitioner before the withdrawal of the compensation amount, and (ii) whether the order of injunction was operative and binding on the date of such withdrawal.

4. On perusal of the impugned order, it is evident that the Trial Court has not recorded any findings on these pivotal issues, which are vital to adjudicating the matter. The failure to address these aspects has resulted in a miscarriage of justice. Consequently, it is necessary that the Trial Court re-considers the matter, particularly in light of the above factors, and renders a fresh decision after affording both parties an opportunity of being heard.

ORDER

(i) The impugned order dated 27th October 2023 passed by the Civil Judge, Junior Division, Ulhasnagar, below application Exhibit 63 in Regular Civil Suit No. 176 of 2018,

is hereby quashed and set aside.

(ii) The application below Exhibit 63 in Regular Civil Suit No. 176 of 2018 is restored to the file of the Civil Judge, Junior Division, Ulhasnagar, for reconsideration in accordance with law.

(iii) The Civil Judge, Junior Division, Ulhasnagar, is directed to decide the application afresh after providing the parties with an opportunity to be heard. The Trial Court shall specifically record findings on the aspects of service of the injunction order and its operability on the date of withdrawal of the compensation amount. The entire exercise shall be completed within a period of four weeks from the date of receipt of this order.

(iv) The petitioner is at liberty to file a detailed reply to the application below Exhibit 63 in Regular Civil Suit No. 176 of 2018, if not already filed.

5. The writ petition is, accordingly, disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)