

Shabnoor

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

WRIT PETITION NO.3728 OF 2024

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Sunita Sunil Inchanalkar

... Petitioner

V/s.

Shailesh Arvind Potdar & Anr.

... Respondents

Mr. Utkash Desai i/by MR. Prashant Bhavake for
petitioner.

Mr. Sandeep S. Koregave for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 20, 2025

P.C.:

1. The petitioner/original plaintiff who filed a suit for injunction in which he filed an application for temporary injunction. The Trial Court by its judgment and order rejected the application for temporary injunction. The petitioner challenged the order by way of an appeal. The Appellate Court without recording prima faice findings as to who is in possession, directed the parties to maintain status quo. The approach of the Appellate Court is not in accordance with law as the scope of an inquiry in an application filed under Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908 seeking injunction restraining defendants from disturbing plaintiffs' possession over the suit property is to adjudicate as to whether the plaintiff is in possession or not. Without recording such findings, it appears that the Appellate Court has directed the

parties to maintain status quo. In absence of prima facie findings as to who is in possession, such order would not have been passed by the Appellate Court. Therefore, it is necessary for the Appellate Court to re-consider the appeal filed by the petitioner. Hence, following order:

ORDER:

(i) The impugned order passed in Miscellaneous Civil Appeal No. 8 of 2023 dated *13th December 2023* is quashed and set aside.

(ii) Miscellaneous Civil Appeal No. 8 of 2023 is restored on the file of learned District Judge – 2, Ichalkaranji.

(iii) Parties shall appear before the District District Judge – 2, Ichalkaranji on **27th January 2025 at 10:30 a.m.**

(iv) The District District Judge – 2, Ichalkaranji shall fix an appropriate date as per its schedule, and decide the appeal within three months from the date of appearance of the parties.

2. The writ petition stands disposed of in above terms. No order as to costs.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 25 January 2025. Correction in paragraph 1(i) shown italicize.