

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4292 OF 2024

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Dr. Mahabaleshwar P. Rao ...Petitioner

Versus

Madhukar Hira Bhoir and ors. ...Respondents

Mr. Vishwanath Patil, a/w Nidhi Chauhan, for the Petitioner.

Mr. Dhananjay Athavale, for the Respondent Nos.11 to 13
CIDCO.

Mr. Hamid Mulla, AGP for Respondent Nos.10 – State.

Mr. S. S. Patvardhan, i/b Mrinal Shelar, for Respondent
No.14.

CORAM: N. J. JAMADAR, J.

DATED: 24th FEBRUARY, 2025

Order:-

1. Heard the learned Counsel for the petitioner.
2. This petition assails an order dated 21st March, 2018 passed by the learned District Judge, Raigad at Alibag, whereby the application preferred by the petitioner for extension of ad-interim injunction order dated 19th October, 2016, came to be rejected.
3. The petitioner had instituted Special Civil Suit No.467 of 2006 for specific performance of contract. By an order dated 4th July, 2016 the said suit came to be dismissed.

4. Being aggrieved, the petitioner preferred Regular Appeal No.182 of 2016. In the said appeal, an application for injunction (Exhibit-5) was filed. On 19th October, 2016, the learned Principal District Judge, Raigad at Alibag was persuaded to grant an ad-interim relief in the nature of restraining the respondents from selling, alienating or otherwise creating third party interest in the suit property. It seems that the petitioner did not appear on 20th March, 2018, the ad-interim injunction was not extended. The petitioner filed an application seeking extension of the said order. On 21st March, 2018, by the impugned order the said application came to be rejected.

5. Mr. Patil, the learned Counsel for the petitioner, submitted that as the Advocate for the petitioner did not inform the petitioner about the said order, steps could not be taken to seek restoration of ad-interim order. It was recently realized that taking advantage of the said vacation of the ad-interim order, third party rights have been created and construction has been erected over the suit property. It was submitted that a reasoned order, which was passed on 19th October, 2016 could not have been vacated for non-appearance of the petitioner.

6. Evidently, the appeal preferred by the petitioner i.e. Regular Civil Appeal No.182 of 2016 is pending before the District Judge, nay even the application for injunction (Exhibit-5) has not been finally decided. The challenge in this petition is to an order passed in the year 2018 of refusing to extend the ad-interim order dated 19th October, 2016. By the sheer passage of time, equities intervene and third party rights are created. All these issues cannot be dealt with in exercise of supervisory jurisdiction. Since the appeal is pending and even the application for injunction (Exhibit-5) does not seem to have been decided, the proper remedy for the petitioner – appellant is to approach the Appeal court and seek appropriate orders.

7. As an apprehension is expressed on behalf of the petitioner that the petitioner's rights would be seriously jeopardized if the interim reliefs are not granted, the learned District Judge seized with Appeal No.182 of 2016, is requested to hear the application for injunction (Exhibit-5) and/or an application for interim relief which be filed on behalf the petitioner as expeditiously as possible on its own merits and in accordance with law.

[N. J. JAMADAR, J.]