



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6412/2024

Vitthal S/o Pundalik Telang,
Aged about 60 years, Occ. Retired,
R/o. Pimpalgaon, Samudrapur,
Tahsil Samudrapur, District Wardha

.... PETITIONER(S)

// VERSUS //

- (1) **Smt. Vimal Shankarrao Kawale,**
Aged about 75 years, Occ. Agriculturist,
- (2) **Raju Shankarrao Kawale,**
(Dead) Through Legal Representative
 - (2a) **Shri Vishal Raju Kawale,**
Aged about 25 years, Occ. Service,
R/o. Ram Cooler Chowk, Shukrawari,
Nagpur, Tah & District Nagpur
- (3) **Dilip Shankarrao Kawale,**
(Dead) Through Legal Representative
 - (3a) **Sonam Dilip Kawale,**
Aged about 31 years, Occ. Household
 - (3b) **Akshay Dilip Kawale,**
Aged about 23 years, Occ. Labour
- (4) **Shri Umesh Shankarrao Kawale,**
Aged Adult, Occ. Service,

- (5) **Shri Prashant Shankarrao Kawale,**
Aged Adult, Occ. Labour,
- (6) **Ku. Mirawati Shankarrao Kawale,**
Aged Adult, Occ. Household,
- (7) **Shri Pintu Shankarrao Kawale,**
Aged Adult, Occ. Not known,
- (8) **Shri Ravi Shankarrao Kawale,**
Aged Adult, Occ. Labour,

Nos. 1, 3a, 3b, 4 to 8 all residents of Netaji Ward Nishan Pura, Near Statue of Sant Tukdoji Maharaj, Hinganghat, Tah. Hinganghat, District Wardha

... RESPONDENT(S)

[illegible]

Shri A. Deshpande, Advocate for the Petitioner(s)
Shri N.M. Kamble, Adv h/f Shri D.R. Bhoyar, Adv for the
Respondents

[illegible]

CORAM : M.S. JAWALKAR, J.
APRIL 25, 2025

ORAL JUDGMENT :-

• **RULE.** Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

(2) The present Petition is filed by the Petitioner challenging the order dated 14/10/2024 passed on the Application below Exhibit 5 in Regular Civil Appeal No. 57/2023 by the learned District Judge-1, Hinganghat whereby the Application filed by the Petitioner – Plaintiff for grant of temporary injunction came to be rejected.

(3) The Suit was instituted for the relief of specific performance of contract and perpetual injunction. The learned Trial Court granted temporary injunction in favour of the Petitioner – Plaintiff which was continued during the pendency of the Suit. The learned Trial Court dismissed the Suit, after hearing both the parties, however, held that the Plaintiff was in possession of the suit property, but the possession was not lawful.

(4) The learned District Judge rejected the Application below Exhibit 5 in Regular Civil Appeal No. 57/2023 on the ground that possession was illegal. Though it is observed in the impugned order that the Plaintiff is in possession of the suit property, the said possession is held as illegal.

(5) In view of the order passed by the learned Trial Court and as admittedly, the Petitioner – Plaintiff is in possession of the suit property, the learned District Judge ought to have allowed the Application below Exhibit 5. Moreover, during the pendency of the Suit, the possession was protected.

(6) The learned Counsel for the Respondents vehemently opposed the Petition, however, in my considered opinion, considering the fact that the Petitioner is in possession of the suit property, it ought to have been continued. In view thereof, the impugned order is liable to be quashed and set aside.

(7) Hence, I proceed to pass following order:-

ORDER

(a) The Writ Petition is **allowed**.

(b) The impugned order dated 14/10/2024 passed on the Application below Exhibit 5 in Regular Civil Appeal

No. 57/2023 by the learned District Judge-1, Hinganghat is hereby quashed and set aside.

(c) The Application below Exhibit 5 in Regular Civil Appeal No. 57/2023 is **allowed** in terms of prayer clause (i).

(d) The District Judge-1, Hinganghat is hereby directed to decide the Regular Civil Appeal No. 57/2023 as expeditiously as possible, preferably within a period of six months from today.

The Petition stands **disposed of** in the above terms.
Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)