



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2350 OF 2025

Digambar s/o Baliramji Maske

Age : 55 Years, Occ.: Agri.,

R/o. Raipur, Parbhani

Tq. and Dist. Parbhani.

... PETITIONER
(Orig. Plaintiff)

VERSUS

1. Madan s/o Shankar Giri
Age : 61 years, Occ.: Agril.,
R/o village Raipur, Tq.& Dist. Parbhani.
2. Prakash s/o Narayan Maske
Age : 61 years, Occ.: Agril.,
R/o village Raipur, Tq.& Dist. Parbhani.
3. Madhav s/o Tukaram Maske
Age : 36 years, Occ. : Agril.,
R/o village Raipur, Tq.& Dist. Parbhani.
4. Bhagwan s/o Manikrao Maske
Age : 66 years, Occ.: Agril.,
R/o village Raipur,Tq.& Dist. Parbhani.
5. Sakharam s/o Vitthalrao Maske
Age : 31 years, Occ. : Agril.,
R/o village Raipur, Tq. & Dist. Parbhani.
6. Pandurang s/o Bapurao Maske
Age : 56 years, Occ.: Agril.,
R/o village Raipur,Tq. & Dist. Parbhani.
7. Prakash s/o Bajirao Maske
Age : 61 years, Occ. : Agril.,
R/o village Raipur, Tq.& Dist. Parbhani.

8. Principal, Jawahar Navodaya Vidyalaya
Balsa (Kh.), Tq.& Dist. Parbhani.
R/o village Raipur, Tq.& Dist. Parbhani
9. Munjaji s/o Shankarrao Shinde
Age : 59 years, Occ.: Agril.,
R/o village Raipur,Tq. & Dist. Parbhani.
10. The State of Maharashtra,
Through its Tahasildar,
Parbhani, Tq. and Dist. Parbhani.

... RESPONDENTS
(Orig. Defendants)

Mr. P. N. Kalani, Advocate for Petitioner
Mr. S. S. Jangada, Advocate for Respondent No.1
Mr. A. B. Dhongade, Advocate for Respondent No.8
Mrs. A.S. Mantri, AGP for Respondent/State

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 2nd FEBRUARY, 2026

FINAL ORDER :-

1. The present Writ Petition takes exception to order dated 05.01.2025 passed by District Judge, Parbhani in Misc.Cvil Appeal No. 87 of 2024, thereby upholding order dated 05.10.2024 passed below Exhibit 1 in R.C.S. No. 302 of 2023 by learned Civil Judge, Senior Division, Parbhani, whereby Petitioner's suit has been dismissed with costs.

2. The Petitioner/Plaintiff instituted R.C.S. NO. 302 of 2023 before Civil Judge, Senior Division at Parbhani seeking relief of perpetual and

mandatory injunction as well as for setting aside Tahasildar's order in RASTA case. The Petitioner had also filed an application below Exhibit 5 seeking temporary injunction which was allowed granting interim injunction against execution of order passed by Tahasildar. It was further directed that suit shall be expedited and disposed of within a period of three months from date of order. It was further observed that in event of delay on part of Plaintiff to proceed with suit, interim relief would stand vacated. Since, Plaintiff failed to take steps for expeditious hearing of suit, Defendant filed application for vacating of interim relief. The Trial Court, after considering rival submissions, passed an order dated 26.09.2024 and posted suit for dismissal vide Order 39 Rule 11 of CPC. On 05.10.2024, suit came to be dismissed observing that since October, 2023 Plaintiff failed to take effective steps to proceed with suit.

3. The Petitioner assailed Trial Court's order dated 05.10.2024 before learned District Judge, Parbhani in Misc.Civil Appeal No. 87 of 2024. Learned District Judge dismissed appeal observing that order of Tahasildar which was subject matter of suit is already implemented and Petitioner/Plaintiff has lost cause of action to proceed with suit.

4. Mr. Kalani, learned Advocate appearing for Petitioner would submit that suit of Plaintiff has been dismissed giving reference to Order 39

Rule 11 of CPC. The impugned order dated 26.09.2024 passed by Trial Court is based on allegation of breach of condition imposed while granting interim relief. Even in case of breach interim relief ought to have been vacated. The drastic action of dismissal of suit could not have been resorted.

5. Per contra, learned Advocate appearing Respondents submits that Petitioner obtained interim relief but failed to take effective steps to proceed with suit, in spite of specific direction given by Court. Initially, by order dated 26.09.2024, Petitioner was granted an opportunity to take effective steps for expeditious hearing of suit, but again on 05.10.2024, plaintiff filed an application, seeking adjournment below Exhibit 64 which was rejected and ultimately suit has been dismissed.

6. Having considered submissions advanced by learned Advocate appearing for respective parties, it is evident that Petitioner/Plaintiff instituted suit raising challenge to order passed by order of Tahasildar under Section 143 of The Maharashtra Land Revenue Code (for short 'MLR Code'). The Petitioner has obtained interim stay to execution of said order in the suit. On condition that, Plaintiff shall take effective steps for disposal of suit within three months. Apparently, there is default on the part of Plaintiff to take effective steps to comply his obligation. The consequence of non observance

of condition is stipulated in Clause 4 of order dated 26.10.2023, as a result, interim protection granted to Plaintiff could have been vacated attributing non compliance of condition. However, suit itself has been dismissed.

7. The drastic action of dismissal of suit can be resorted to, only when, default party willfully and contumaciously caused serious prejudice to opponent. In present case, Petitioner alleged to have prolonged proceeding in suit. Trial Court, having held default on the part of Petitioner, could have at the most vacated interim relief. However, drastic action of dismissal of suit, without attributing willful and contumacious act or serious prejudice to defendants cannot be countenanced in law as held by this Court in case of ***M/s. Chetan Associates Versus Abhilasha Co-op Hsg. Soc. Ltd., 2020(1) AIR BomR 587.***

8. The Petitioner had approached Appellate Court aggrieved by order of dismissal of suit, however, Appellate Court without considering objections on merit of Trial Court's order, observed that since Tahasildar's order under Section 143 of MLR Code has been already executed, cause of action does not survive to Plaintiff. The aforesaid observations cannot be countenanced, when there is substantive challenge to order passed by Tahasildar under Section 143 of MLR Code. The Trial Court is obliged to

decide validity and correctness of such order, even when order has been implemented. That itself would not render prayers in suit as infructuous.

9. In result, case is made out to allow Writ Petition in terms of prayer clause 'A'. However, since order dated 29.05.2023 passed by Tahasildar in File No. 2023/Jamabandi-1/Rasta/Kavi-57 has been implemented by Tahasildar after dismissal of suit, there shall not be automatic revival of interim order dated 26.10.2023 passed below Exhibit 5 in R.C.S. No. 302 of 2023.

(S. G. CHAPALGAONKAR, J.)

ssp