

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

WRIT PETITION NO. 6153 OF 2025

Balkrushna Kondiram Chavan And Anr.Petitioners
Vs.
Nandkishor Pandurang Hiralkar And Ors.Respondents

Mr. Rugwed R. Kinkar i/b Mr. Drupad Sopan Patil, Advocate for
Petitioners.
Mr. Vijay Killedar for Respondent nos. 1 to 3.

CORAM : SACHIN S. DESHMUKH, J.
DATE : 5th MARCH 2026.

P.C.

1. The challenge is raised to the order dated 27.02.2025 rendered by learned District Judge-1, Wai in Misc. Civil Application No. 244 of 2023 thereby upsetting the order of the Trial Court rejecting the application below Exhibit 5.

2. The Petitioners are the original Defendants in Regular Civil Suit No. 194 of 2025, instituted by the Plaintiffs/Respondent Nos. 1 to 3 herein, before the Court of learned Civil Judge, Senior Division, Wai, District Satara, seeking a permanent prohibitory injunction in relation to the business carried on by the Defendants at the suit property.

3. Brief facts of the case are as follows:

The Plaintiffs contend that the suit property had been converted into a non-agricultural category and sanctioned for residential use only. Notwithstanding the same, the Defendants are using the suit property for commercial purposes. On account of the business activities of the Defendants, air pollution and noise pollution have been caused. The Plaintiffs, being neighbours of the Defendants, are suffering from health issues owing to the polluted environment. Further, nuisance is being caused to the Plaintiffs on account of the high voltage spice grinding machine operated by the Defendants. The Defendants have no right to use the suit property for commercial purposes. The Plaintiffs preferred complaints before various revenue authorities. Notwithstanding the directions issued by the concerned authorities, there has been a failure on the part of the Defendants to implement the same. Consequently, the Plaintiffs instituted the present suit against the Defendants.

4. In the interregnum, the Plaintiffs/Respondents presented an application below Exhibit 5 seeking an interim injunction before the trial Court, which came to be rejected vide order dated 28.07.2023.

5. Aggrieved by the same, plaintiffs approached the learned District Court, Wai by presenting Misc. Civil Application No. 244 of 2023, which came to be allowed, and consequently an order of interim injunction was passed against the Defendants. Thus, the

Petitioners have approached this Court under Article 227 of the Constitution of India.

6. Learned Counsel for the Petitioners submits that in the absence of a necessary party to the Suit, the Trial Court was fully justified in rejecting the application below Exhibit-5, however, the First Appellate Court misdirected itself and erred in passing the impugned order.

7. *Per contra* learned advocate for respondent nos. 1 to 3 justified the order and prayed for dismissal of the Petition.

8. Having considered the rival submissions advanced by the learned counsel for the respective parties and upon perusal of the material placed on record, this Court is of the considered opinion that the pivotal issue involved in the present petition is with respect to the non-joinder of a necessary party to the Suit, namely, the wife of Defendant No. 2, who is allegedly running the said business.

9. Further perusal of the record indicates that the trial Court had primarily rejected the application for interim injunction, due to non-joinder of the wife defendant No.2. The Appellate Court, however, differed with the said view, holding that since Defendant No. 2 was already added as a party to the Suit, non-joinder of his wife was not a necessity, and accordingly granted the order of interim injunction against the Defendants.

10. Having regard to the aforesaid facts and circumstances, the assertion of Plaintiffs is that they are suffering on account of the alleged spice grinding business which is being carried out by the wife of Defendant No.2. Moreover, Defendant No. 2, in his written statement, has categorically stated that the said business is under the management and control of his wife. However, the appellant Court has overlooked the said aspect and assumed that impleadment of husband is sufficient to represent the interest of the wife.

11. Although husband and wife are often regarded as a single domestic unit, the subject matter of the present Suit specifically concerns the wife of Defendant No. 2 and her alleged independent spice grinding business. The relief sought by the Plaintiffs directly affects her said business. Thus, it cannot be presumed that the impleadment of the husband as a party to the Suit sufficiently represents and safeguards the interests of the wife..

12. Since the relief sought in the present Suit directly concerns the wife of Defendant No.2 and adversely affects her proprietary, commercial and economic interests, the non-impleadment of the said necessary party amounts to a material defect in the proceedings. Consequently, the Appellate Court has erred in overlooking this fundamental aspect. Resultantly, the order rendered by the Trial Court shall stand restored.

13. Hence, following order:

ORDER

I. Writ Petition is allowed.

II. The impugned order dated 27.02.2025 passed by learned District Judge-1, Wai in Misc. Civil Application No. 244 of 2023 is hereby quashed and set aside.

14. Needless to clarify that this Court has not considered any other aspect. It is for the Trial Court to consider other issue on its own merits.

(SACHIN S. DESHMUKH, J.)

IRESH
MASHAL

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