

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

WRIT PETITION NO. 11416 OF 2025

Nilesh Manohar Desai
VERSUS
Suresh Janardan Bhoje And Ors.

Mr. Yuvraj Narvankar with Mr. Rahul Patil, advocate for the
Petitioner

Mr. Rakesh Bhatkar i/b Mr. Aarya V. Ambulkar, advocate for respondent
no. 1

Mr. Tejpal Ingale a/w Ms. Vrunali Vilankar and Mr. Aditya R. Patil for
Respondent Nos. 2 to 6.

CORAM : SACHIN S. DESHMUKH, J.
DATE : 21st APRIL, 2026.

P. C. :

1. Heard. Rule. Rule made returnable forthwith. By consent of
the parties, Petition is decided finally at the admission stage.

2. The Petitioner has raised an exception to the Judgment and
Order dated 28/07/2025 below Exhibit 52 rendered by the Principal
District Judge, Ratnagiri in Misc. Civil Appeal No. 24/2022 setting
aside the order dated 07/07/2022 below Exhibit 6 rendered by Civil
Judge Junior Division, Devrukh in R.C.S. No. 30/2021 granting
injunction, exercising discretion in favour of Petitioner.

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3. The Petitioner is the original Plaintiff whereas the Respondents are the original Defendant Nos. 1 to 7 in R.C.S. No. 30/2021 presented for declaration and injunction. (Hereinafter the parties shall be referred to by their original status in the Suit)

4. In the interregnum, the Plaintiff presented an Application below Exhibit 6 seeking temporary injunction against the Defendants, obstructing the use of the pathway in relation to the Suit property. The same came to be partly allowed restraining Defendant No. 1 from interfering or obstructing the Plaintiff from exercising the right of the way in relation to the Suit property; while the prayer for temporary injunction against the other Defendants came to be rejected.

5. Aggrieved by the same, Respondent No. 1/Defendant No. 1 approached the Court of Principal District Judge, Ratnagiri presenting an Appeal. Consequently, the same came to be allowed and the aforesaid order of the Trial Court has been set aside. Hence, the Plaintiff is before this Court.

6. Learned counsel for the Petitioner/Plaintiff submits that the order under challenge is unsustainable in law and the Appellate

court erred while setting aside the order of the Trial Court. The Plaintiff and his predecessors were enjoying the rights of easement over the way in the Suit property since last more than 30 years. However, the Appellate Court failed to appreciate the same. Also erred in substituting the finding rendered by the Trial Court. As such, prayed to allow the Petition.

7. *Per contra* Mr. Bhatkar, learned counsel for respondent no. 1 has opposed the Petition and supported the order rendered by the First Appellate Court. Mr. Ingale, learned counsel for respondent nos. 2 to 6 adopted the submissions advanced by learned counsel for respondent no. 1 submitting that the Appellate Court has corrected the patently illegal order rendered by the Trial Court.

8. Upon considering the submissions of litigating sides and on perusal of material on record, particularly the Application seeking interim injunction indicates that the Plaintiff had essentially sought an easementary right of way through the Suit land seeking the injunction against the Defendants to not obstruct or restrain the Plaintiff for accessing the agricultural land.

9. Perusal of the Plaint *prima facie* indicates that the right of way

towards the land belonging to Plaintiff passes through the land belonging to the Defendant No. 1. It is contended that the Plaintiff has no other way than that of the passing going from the land of Defendant No. 1. Hence, the Application for injunction. The Trial Court considered the Application and allowed the same while exercising the discretion in favour of the Petitioner.

10. At this juncture, it would be apt to consider the verdict of the Hon'ble Apex Court in the case of *Dalpat Kumar And Anr. vs Prahlad Singh And Ors*¹ particularly in paragraph 4 and 5 which reads as under:

“4. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.”.

“5...Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction

¹ AIR1993 SC 276

and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

11. After considering *prima facie* case, balance of convenience and irreparable loss, the Trial Court has exercised the discretion in favour of the Plaintiff applying the provisions of Order XXXIX Rule 1 of Code of Civil Procedure, 1908. The same ought not to have been interfered by the Appellate Court in absence of recording any perversity while applying the principles as laid down by the Hon’ble Apex Court in *Dalpat Kumar (Supra)*.

12. The Hon’ble Apex Court in the case of the *Hon’ble Apex Court in Wander Limited And Another vs. Antox India P Ltd.*², in

² 1990 (Supp) SCC 727

particular, para 13 and 14 thereon, which reads as under :

“13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* :

... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”

13. Perusal of the record indicates that essentially the Suit is filed

for declaration and injunction. There are categorical assertions in the Plaint regarding the right of Plaintiff to access the pathway from the land of Defendant. Owing to obstruction, the cause of action arose and the Suit came to be instituted. Moreover, there are certain mango trees reported to be more than 30 years age in the land of Plaintiff. Thus, it is plausible that the Plaintiff accessed the pathway as claimed.

14. The Trial Court has taken into account triple test while exercising the discretion i.e. *prima facie* case, balance of convenience and irreparable loss weighing in favour of Petitioner to use the access to agricultural operation through the land. Having exercised the discretion as has been held by the Hon'ble Apex Court, in the case of *Dalpat Kumar (Supra)*, there was no reason, much less justifiable one for the Appellate Court in absence of any material on record to indicate that exercise of discretion by the learned Trial Court is arbitrary or capricious, perverse or had ignored settled principles of law regulating the grant of interlocutory injunction.

15. Since an Appeal against grant of interlocutory injunction is an Appeal against exercise of discretion is said to be an appeal on principles, it will not be open to Appellate Court to reassess the

material and to reach a conclusion different from one rendered by Court below is reasonably possible on the basis of material, as has been held in ***Wander (Supra)***.

16. Apart from above, perusal of record indicates that inspite the order of injunction by the Trial Court, the Defendants committed breach of the said order and obstructed the Plaintiff from using the pathway and threatened him. Accordingly, the Plaintiff filed an application below Exhibit 127 in the Suit pointing out the breach of injunction order. Consequently, the defence of Defendant No. 1 came to be struck off by order dated 12/06/2024.

17. At this juncture, it would be appropriate to refer to the authoritative pronouncement of the Hon'ble Apex Court in ***Gujarat Bottling Co. Ltd. And Ors Vs. Coca Cola Co. and others***³, wherein the Apex Court observed as follows:

“In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being

³ (1995) 5 Supreme Court Cases 545

approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.”

18. In the instant case, the Appellate Court failed to note the conduct of the Defendants who despite the order of the injunction committed breach of the same. Thus, the same being an equitable relief, the Court below ought to have considered the conduct of the party as observed in ***Gujarat Bottling (Supra)***.

19. Such contumacious conduct of the respondent is evident from

their persistent defiance of the injunction order then in force. Despite the Court previously taking recourse to Order-XI, Rule 21 of Code of Civil Procedure, 1908, the Defendants' tenacious approach of disobedience, continued to act with impunity. This further continued defiance ultimately compelled the Court to strike out their defense. Such a recalcitrant approach is legally untenable and also disentitles the Defendants from claiming any discretionary relief.

20. At this stage, the Court has to primarily satisfy *prima facie* case, balance of convenience and irreparable loss. The findings of the Trial Court create a plausible effect in favour of the Plaintiff to establish a *prima facie* case. In any case, grant of right to easement to the Plaintiff may not cause any irreparable loss to the Defendants. Thus, at this stage, it would not only be proper but necessary to grant the interim relief in favour of the Plaintiff to subserve the ends of justice.

21. In view of the aforesaid discussion, I am of the considered opinion that the Appellate Court grossly erred in upsetting the Trial Court's well-reasoned order, which rightly refused discretionary relief to the Petitioners.

22. Hence, following order.

ORDER

I. Writ Petition is allowed.

II. The Judgment and Order dated 28/07/2025 below Exhibit 52 rendered by the learned Principal District Judge, Ratnagiri in Misc. Civil Appeal No. 24/2022 is hereby quashed and set aside.

III. Needless to state the order dated 07/07/2022 below Exhibit 6 rendered by Civil Judge Junior Division, Devrukh in R.C.S. No. 30/2021 shall stand restored.

IV. Rule is made absolute in above terms.

23. At this stage, Mr. Bhatkar seeks stay of this order. Considering the conduct of these Defendants defying the orders with impunity, as such, request to stay does not warrant consideration, accordingly, the same is rejected.

24. Needless to state that observations rendered herein above are in relation to the interlocutory injunction and the Trial Court to consider the Suit on its own merits and uninfluenced by the observations rendered hereinabove.

[SACHIN S. DESHMUKH, J.]