



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5119 OF 2024

1. Prakash Rajeshwarrao Bejankiwar,
Age : 62 Years, Occu. : Business,
R/o. Rajura, Tah. Rajura,
Dist. Chandrapur.
2. Datatrya Rajeshwarrao Bejankiwar,
Age : 66 Years, Occu. : Business,
R/o. Rajura, Tah. Rajura,
Dist. Chandrapur.
3. Sanjay Rajeshwarrao Bejankiwar,
Age : 60 Years, Occu. : Business,
R/o. Rajura, Tah. Rajura,
Dist. Chandrapur.
4. Sou. Aruna Ashok Tundulwar,
Age : 67 Years, Occu. : Household,
R/o. Rajura, Tah. Rajura,
Dist. Chandrapur.
5. Sou. Nisha Narayan Talapwar,
Age : 64 Years, Occu. : Household,
R/o. Rajura, Tah. Rajura,
Dist. Chandrapur.

.... Petitioners

VERSUS

1. Ramu Paikujji Yedme,
Age : 54 Years, Occu. : Agriculturist,
R/o. Dewapur, Tah. Rajura,
Dist. Chandrapur.

2. Laxmi (Lami) Ramu Yedme,
Age : 49 Years, Occu. : Housewife,
R/o. Dewapur, Tah. Rajura,
Dist. Chandrapur.
3. Lakhu Paiku Yedme,
Age : 52 Years, Occu. : Agriculturist,
R/o. Dewapur, Tah. Rajura,
Dist. Chandrapur.
4. Vrunda Lakhu Yedme,
Age : 51 Years, Occu. : Agriculturist,
R/o. Dewapur, Tah. Rajura,
Dist. Chandrapur.
5. Shankar Paiku Yedme,
Age : 49 Years, Occu. : Agriculturist,
R/o. Dewapur, Tah. Rajura,
Dist. Chandrapur.
6. Ratubai Shankar Yedme (Deleted). Respondents

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Advocate for Petitioners : Mr. A.A. Dhawas
Advocate for Respondents : Mr. N.R. Bhishikar
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CORAM : PRAFULLA S. KHUBALKAR, J.

Dated : 28th APRIL 2026

JUDGMENT :

1. Heard.
2. **Rule.** Rule is made returnable forthwith and by consent of learned Advocates appearing for the parties, the petition is taken up for final disposal.

3. By this petition, the petitioners have challenged an order dated 04.01.2024, at Exhibit 22, passed by Civil Judge Junior Division, Rajura, Dist. Chandrapur, in proceedings bearing MJC No.07 of 2017 and order dated 09.05.2024, at Exhibit 25, passed by District Judge-2, Chandrapur, in Regular Civil Appeal No.02 of 2020, rejecting the applications for grant of police aid for fencing the suit property.

4. The short controversy involved is as to whether the petitioners are entitled for grant of police aid for fencing the suit property. The petitioners are the original plaintiffs, who had filed a suit bearing Regular Civil Suit No.140 of 2012 for permanent injunction to restrain the respondents from dispossessing them from the suit property, in which they have also filed a separate application for temporary injunction, which was allowed by order dated 10.08.2012. By alleging breach of injunction, the petitioners filed an application under Order 39 Rule 2-A of the Code of Civil Procedure, 1908, vide MJC No.07 of 2017. Although the suit came to be decreed finally by judgment and order dated 05.12.2019, the application bearing MJC No.07 of 2017 remained pending. The said judgment and decree is challenged by the defendants (respondents herein) by way of an appeal bearing R.C.A. No.02 of 2020, which is pending.

5. In this situation, the petitioners filed an application at Exhibit 22 in proceedings bearing MJC No.07 of 2017, for grant of police aid for fencing the suit property to secure their possession, which came to be rejected by order dated 04.01.2024, for the reasons that the relief can be claimed in the pending appeal. Thereafter, the petitioners filed a similar application in the pending appeal at Exhibit 25, which came to be rejected by the appellate court by observing that the similar application is already rejected by the trial court in pending MJC No.07 of 2017. As such, in view of rejection of the petitioners' application for grant of police aid, for fencing the suit property, they have challenged both these orders by way of instant petition.

6. It has to be noted that when the petitioners wanted to protect the suit property by fencing it, they filed an application for grant of police aid before the trial court in the pending MJC No.07 of 2017, which came to be rejected only on account of pendency of regular civil appeal. Thus, for the same purpose, when the petitioners filed an application for grant of police aid before the appellate court, the same ought to have been decided on its own merits and by considering the reasons put forth in the said application. It has to be noted that the decree of permanent injunction is operating in favour of the petitioners and they are entitled to secure their property by

fencing it. Under this situation, the application for grant of police aid ought to have been decided by considering the need put forth by the petitioners in the said application.

7. A perusal of the order dated 09.05.2024, passed by the appellate court, which is impugned herein, shows that the appellate court rejected the application only because a similar application was rejected by the trial court in proceedings bearing MJC No.07 of 2017. The reasons recorded by the appellate court shows non application of mind to the contentions put forth by the petitioners *vide* their application at Exhibit 25. The impugned order passed by the appellate court does not show consideration to the contentions of the parties and as such, the same is unsustainable.

8. In view of the aforesaid factual and legal aspects, the appellate court needs to be directed to decide the application at Exhibit 25 afresh. Hence, following order is passed.

ORDER

- I) The writ petition is partly allowed.
- II) The order dated 09.05.2024, passed by District Judge-2, Chandrapur, at Exhibit 25, in R.C.A. No.02 of 2020, is quashed and set-aside.

- III) The matter is remanded to the Court of District Judge-2, Chandrapur, for deciding the application at Exhibit 25 afresh, after giving opportunity of hearing to the parties concerned.
- IV) No order as to costs.
- V) Rule is made absolute accordingly.

[PRAFULLA S. KHUBALKAR]
JUDGE

asd