

MHKO050033442017 	<u>Order below Exh.57 in RCS No.354/2017</u> <u>Shri Ashok Bapu Kamble Vs.</u> <u>Smt. Rekhatrai Dagadu Chopade</u> <u>CNR No.MHKO050033442017</u>
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The instant application is filed by the plaintiff under Order XXXIX Rule 1 & 2 read with section 151 of the Civil Procedure Code for grant of temporary injunction. Perused the application. Heard learned counsel Mr. Sharma appearing for the plaintiff.

2. Before proceeding ahead with the order, it is necessary to note here that, the instant application is filed by the plaintiff on 19/11/2022 by taking the matter on board. After filing of the instant application, this Court called upon say of defendants. The matter was kept on 22/11/2022 i.e. today itself.

3. However, it is necessary to note here that, today this Court was assigned duty on Mobile Lok-adalat scheduled at village Chandur, Tal. Hatkanangale, Dist. Kolhapur. The instant matter was also taken in the Mobile Lok-adalat held at village Chandur. Both the plaintiff and defendants have appeared before Mobile Lok-adalat. However, settlement did not take place. Thereafter in the second session learned counsel Mr. Sharma submits that the defendants are not present in the Court and have not filed any say to the temporary injunction application. He submits that the defendants want to prolong the matter so that they would complete the construction and therefore order of status quo is necessary to be passed.

4. He further submits that, previously the plaintiff had filed a similar application under Order XXXIX and Rule 1 & 2 of Civil Procedure Code. However, subsequently, defendants filed a pursis below Exh.55 and contended that as the defendants have completed the construction the said application has turned infructuous. He submitted that the defendants purposely take time and thereafter raised construction. He further submits that the defendant has knowledge of temporary injunction application and deliberately refused to appear in the matter today. Thereafter learned counsel Mr. Sharma had argued on merits at length. He prays for grant of status quo until next date.

5. I have carefully gone through the record. It is apposite to note here that, today this Court was assigned duty as the head of the panel of the Mobile Lok-adalat at village Chandur. Both the plaintiff as well as defendants had appeared before me in the said Mobile Lok-adalat at village Chandur. However, no settlement could be arrived between the parties. Thereafter, this Court has resumed its functioning in the second session. What is pertinent to note here is that the defendants by way of abundant caution have already filed a Caveat application. However, no orders have been passed regarding the same as the concerned staff has not put up the original Caveat application before this Court. However, a copy of the said application is filed by the plaintiff himself along with list of documents at Exh.59. In such a situation, it is necessary for this Court to hear the defendants before passing any order regarding to the suit property. At this juncture learned counsel Mr. Sharma submits that the

defendants have intentionally avoided to appear before this Court today therefore order of status quo be passed. However, I find no merit in the said submission for the reason that both the parties had appeared before me in the first session in Mobil Lok-Adalat at village Chandur. In such a situation, passing of any orders, especially in the light of a Caveat being filed by the defendants would be against the principle of natural justice and would be prejudicial to the defendants. In such a situation, as Caveat has been filed by the defendants, I find it necessary to adjourn the matter today and to issue notice to the defendants. Needless to mention here that, prayer of the plaintiff can be considered after the defendant acknowledge the copy of the instant application and appear in the matter. Accordingly, I proceed to pass the following order :-

ORDER

1. Issue show cause notice to the defendants returnable on 30/11/2022 as to why the prayer in the instant application should not be granted.
2. If the defendants appears after passing of this order and receive the copy of the application, then they are directed to file their reply below Exh.57 on or before 30/11/2022.
3. Keep the matter for further inquiry on 30/11/2022.

Date- 22/11/2022
Ichalkaranji

(S. A. Ingley)
2nd Jt. Civil Judge Junior Division,
Ichalkaranji

-- C E R T I F I C A T E --

I affirm that the contents of this P.D.F. file Judgment/ Orders are same, word to word, as per the original Judgment / Order.

Name of stenographer	R. D. Jadhav
Name of Court	S. A. Ingley 4 th Jt. Civil Judge Jr. Div., Ichalkaranji.
Date of Dictation	22/11/2022
Order signed by P.O. on	22/11/2022
Order uploaded on	22/11/2022