


MHKO170002312019 	Reg. Civil Suit No.18-2019 Rangrao Pandurang Patil Vs. Bandu Babu Jadhav
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Order passed below Exhibit 18.

Defendant by way of this application prayed to re-hear and re-decide the application for interim injunction below Exh.5. It the sum and substance of defendant's application that the notice of application below Exh.5 has not served upon defendant. Defendant has not filed say to application below Exh.5 but predecessor of this court heard plaintiff on application below Exh. 5 and decided the application. That the predecessor of this court passed order below Exh.5 by only considering arguments of plaintiff and allowed the application. That the defendant has timely filed his written statement but not filed say to application below Exh.5 as the notices of application below Exh.5 was not served upon him. Therefore, defendant prayed to re-hear and re-decide the application for interim injunction.

02. Defendant in support of his submissions relied on Judgment of **Hon'le High Court Bombay** in case of **Mrs. Kacchi Properties V/s. Ganpatrao Kadam** reported in **2010 (5) All MR 366** where in it is held by the Hon'ble High Court that "*Sec.52 of T.P. Act provides adequate protection to parties from transfers pendente lite*". The facts of present case and case law cited supra are different hence not helpful to the defendants.

03. Plaintiff has filed his say to this application and resisted the application. It is submitted by plaintiff that defendant after appearing in the suit has filed two applications below Exh.10 and 13 and prayed to grant time to file say to application below Exh.5. In spite of sufficient opportunity defendant has not filed his say to application for interim injunction and predecessor of this court rightly decided the application for interim injunction. Therefore, plaintiff prayed to reject the application.

04. Perused the applications, say and record of the case. Perused the application below Exh. 5, order of my predecessor dated 23.01.2020 and 05.02.2021. By way of this application defendant seeking re-hearing of application below Exh.5. It is pertinent to note that suit is filed on 07.02.2019 and defendant appeared in the suit on 17.10.2019. Defendant on 17.10.2019(Exh.10) and 28.11.2019 (Exh.13) filed application and prayed for time to file say to application below Exh.5. These two applications of defendant are allowed by this court. It means defendant has knowledge of application below Exh.5 for interim injunction. It is note worthy that my predecessor by her order dated 23.01.2020 directed to proceed application below Exh.5 without say of defendant as defendant has not filed say till that day. It is pertinent to note that there after on 05.02.2021 my predecessor has passed order on application below Exh.5. Considering these dates orders and facts it cannot be said that defendant has no knowledge of application below Exh.5 and order on application below Exh.5 is passed behind back of the defendant. That the order passed by predecessor of this court below Exh.5 is order on merits of the application.

05. Defendant has not specifically mentioned that present application is filed under provisions of section 151 of Code of Civil Procedure. Provision under Section 151 of Code of Civil Procedure speaks about residual and inherent powers of the court. It is pertinent to note that such power required to be used when it is necessary to meet ends of justice. When orders passed by court on merit then generally court become *funtuos officio* . As above stated my predecessor passed order on merits of the application and giving sufficient opportunity to the parties. It is needless to say that no court can help the litigant who sleepover their rights. Further more reconsideration of application can be made under the provisions of review , revision and appeal. It is pointless to say that this court has not vested with powers of revision and appeal. The defendant neighter prayed for review of order nor any grounds for review are made out by the application of defendant. Considering this facts and circumstances no case is made out to use inherent power of court under provisions of section 151 of Code of Civil Procedure. Hence application is liable to rejected. Hence the following order.

ORDER

Application is rejected.

Date : 16.09.2022.
Place: Panhala.

Atul A. Kore,
Jt. Civil Judge Jr. Division, Panhala.

