



**ORDER BELOW APPLICATION (EXHIBIT 5) IN
MISCELLANEOUS CIVIL APPEAL NO. 86/2023
(DADASO VS. SITARAM & OTHS.)
(PASSED ON : 25/10/2023)**

1. Heard, Shri. Bahirat, advocate for the appellant.
2. Shri. Bahirat, advocate for the appellant submitted at Bar that no other appeal in respect of the order under appeal is pending before any Court.
3. The caveat bearing No. 78/2023 is pending.
4. Read application and affidavit filed in support.
5. Gone through the order under appeal.
6. After going through the pleading and order under appeal it transpires, prima-facie that the appellant had filed Regular Civil Suit (for short 'R.C.S.') No. 21/2023 in the Court of Civil Judge Junior Division, Sangola (for short 'Civil Judge') seeking declaration and perpetual injunction in respect of order passed by the Tahsildar, Sangola in No. रस्ता/एसआर/११/२०१९ dated 23/08/2021 (for short 'Tahsildar's order') in which he has filed application (Exhibit 5) seeking temporary injunction against the respondents. The application (Exhibit 5) is rejected by the Civil Judge by passing order dated 27/04/2023 (for short 'order under appeal').
7. It transpires from the order under appeal passed by the Civil Judge that the appellant have failed to prove prima-facie case about his entitlement of temporary injunction. This finding is based on the evidence produced by the parties. However, the Civil Judge has lost

sight of the fact that there are 1500 pomegranate trees in the land. The Tahsildar has passed order granting police protection on 17/10/2023 based on order No. रस्ता/एसआर/११/२०१९ dated 23/08/2021. The order is to be executed on 26/10/2023. Under such circumstances if status quo is not granted in favour of the appellant, there is possibility that the respondents will execute the Tahsildar's order which will ultimately multiply the proceeding causing unnecessary complications in settling the legal rights of the appellant, if any. Therefore, even if caveat is pending I am inclined to grant this application. For this view I am buttressed by the following rulings :-

7.1. In a landmark case of Reserve Bank of India Employees Association and another Vs. The Reserve Bank of India and others, AIR 1981 AP 246, the question of Law before the Hon'ble Andhra Pradesh High Court was Whether an order of stay that is made without hearing the caveator is unenforceable or is a nullity ? The Hon'ble High Court held :-

"An order that is passed without giving due notice to the caveator cannot be held as a total nullity. It was said that if the legislator's intent was to curtail the ordinary powers of a civil court it could have done so by a direct legislation rather than by an indirect one. The powers of a Civil Court are too sacrosanct for it to be allowed to be altered or diluted or even curtailed by a remote implication.

In this case that a mere lodgment of a caveat petition will not curtail the power of the Court even if the caveator was not informed of the date of hearing of the matter. Caveat is merely a right of the person to be notified but this cannot bar the Court from passing interim order on the merits of the case".

7.2. The same stance is taken in the cases of

(i) K. Rajasekaran Vs. K. Sakunthala & Ors., 2008 SCC OnLine Mad 617 and (ii) Kendriya Vidyalaya Sangthan & Ors. Vs. M. L. Mudgal, 1993 SCC OnLine Raj 493.

8. The appellant has challenged the order under appeal, in this appeal. The order under appeal is required to be re-judged and pending such adjudication if the respondents does any act in respect of the road and execute the Tahsildar's order, in the event of his ultimate success, the suffering of the appellant may become irreversible. Therefore, the application deserves to be granted, partly at this stage.

9. Moreover, whether the order under appeal is proper or legal or not is required to be considered on merits at the time of final hearing of this appeal.

10. After carefully considering all the relevant aspects, it is clear that the impugned order is in respect of rejecting right of the appellant in respect of the Tahsildar's order and in my opinion, this is sufficient reason to grant this application and there are no exceptional reasons existing which requires the rejection of the same, at this stage.

11. After going through the order under appeal it transpires that if it is allowed to remain as it is, the legal rights of the appellant will be prejudiced and he will suffer substantial loss. Under these facts and circumstances the court's interference is necessary to protect the appellant' legal rights.

12. Considering my findings supra, it appears that, the object of granting status quo order would be defeated by delay if it is not granted, in the first instance. Therefore, in order to avoid multiplicity of the proceeding I am of view that if status quo order is granted, no harm

or injustice will be caused to the respondents. The appellant has prima-facie satisfied me on this point that there is sufficient reason to grant status quo order, as prayed for.

13. In the result, the order.

ORDER

1)	The application (Exhibit 5) is granted, partly.
2)	The appellant and the respondents are directed to maintain status quo in respect of the order passed by the Tahsildar, Sangola in रस्ता/एसआर/११/२०१९ dated 23/08/2021 till further order.
3)	The show cause notice be issued to the respondents as to why the order granting status quo should not be confirmed till final decision of this appeal, as prayed by the appellant.
4)	The E.P., S.B. and Hamdast is allowed.
5)	The notice returnable on 07/11/2023.

(Pronounced in Open Court)

Date : 25/10/2023.

(M. B. Lambe),
District Judge-1,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe, District Judge – 1 & Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 25/10/2023
- (d) Order uploaded on : 27/10/2023