

R.D. No.05/2018
Anil Vs. Shivaji

ORDER BELOW EXH-44.

Judgment debtors Nos.25 and 26 have moved the present application with prayer for not passing any order in respect of possession warrant in the backdrop of institution of Writ Petition (stamp) No.3066/2023. Learned advocate Shri Shikare has filed extract of copy of an e-mail in respect of institution of above said Writ Petition. He has placed reliance on the observations of the Hon'ble Bombay High Court in case of Kishor s/o Bhikansingh Rajput Vs. Preeti w/o Kishor Rajput and contended that this court has to wait till further order passed by the Hon'ble Bombay High Court. He took me through para No.8 and pointed out the observations which are as under :

“8. Normally when this court is seized of the matter, it is expected by the subordinate court to stay their hands away...”

2. However, in case of Vishwanath Vs. Suryavanshi, MANU/MH/0293/2011, the lordship of the Hon'ble Bombay High Court after placing reliance on the observations in case of Kishor (supra) has laid down as under :

“9... I am at pains to say that the aforesaid judgment in Kishor Rajput's case is being used as a tool to protract the proceedings by the litigants not interested to proceed with the matters before the lower courts. No doubt, that if the order of the sub ordinate court is challenged before this court and the sub ordinate court is informed about the pendency of the matter before

this court it would be expected of the trial court to stay its hand away for a period of a week or two. So, as to enable the parties to get circulation before this court and obtain appropriate order. However, merely by filing the proceeding before this court, the proceeding before the lower court cannot be permitted to be protracted for months together at the interest of the litigants who neither circulates the matter before this court nor got the interim order staying the proceeding” (emphasis given)

3. The perusal of the record reveals that the order below Exh.28 and 33 has been passed on 04.01.2023. The aggrieved party i.e. J.D. No.25 and 26 approached Hon'ble Bombay High Court on 31.01.2023 in Writ Petition (Stamp) No.3066/2023. Hence, in view of observations in case of Vishwanath (supra), the matter be adjourned for three weeks for enabling judgment debtor Nos.25 & 26 to bring interim order, if any, from the Hon'ble High Court. Post the matter on 03.03.2023.

4. The judgment debtors do note on their failure to bring interim order, in view of observations in case of Vishwanath (supra) the proceeding cannot be permitted to be protracted further.

5. Order dictated in open court.

6. The order is digitally signed.

Date : 09.02.2023.

[A. R. Yadav.]
Jt. C.J.J.D., Pandharpur

CERTIFICATE

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

Name of the Stenographer	:	Rajiv Malkarjun Gogi.
Court	:	Jt. Civil Judge, J.D. Pandharpur.
Date of Order		09.02.2023
Order signed by the presiding officer on		09.02.2023