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IN THE COURT OF AD-HOC DISTRICT JUDGE-4, AHMEDNAGAR
DISTRICT- AHMEDNAGAR

(Presided over by R. D. Chavan)

Miscellaneous Civil Appeal No. 85 of 2026

Exh. 14

- 1) **Nisar Ibrahim Shaikh**
Age : 56 years, Occ. : Business
- 2) **Murtuja Ibrahim Shaikh**
Age : 53 years, Occ. : Business
Both r/o : Panchir Chawadi,
Ahilyanagar.

Appellants
(Original defendants)

Versus

- 1) **Ashok Baburao Gaikwad**
Age : 71 years, Occ. : Business
- 2) **Anil Baburao Gaikwad**
Age : 61 years, Occ. : Business
Both r/o : Viraj colony,
Tatakpur,Ahilyanagar

Respondents
(Original plaintiffs)

For Appellants : Adv. Shri. S. S. Kakde

For Respondents : Adv. Shri. S. R. Bihani

:: JUDGMENT ::

(Delivered on 12th August, 2026)

The present Miscellaneous Civil Appeal is filed against the order dated 15.07.2026 passed below Exh.5 in Regular Civil Suit

No. 689 of 2025, whereby the application of the plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure came to be partly allowed and the defendants were temporarily restrained from obstructing the plaintiffs from carrying out repairs to the damaged roof of the suit property i.e. eastern side spacing 6 khan shop premises and tin shed bearing Municipal Survey No. 4652 and City Survey No. 5201 situated within the jurisdiction of Ahmednagar Municipal Corporation. (Hereinafter referred to as the suit property.) (For convenience, the parties are referred to by their nomenclature in the suit.)

Background facts:-

2. The plaintiffs i.e. respondents in the present Miscellaneous Civil Appeal have filed the suit for permanent injunction to restrain the defendants i.e. herein, from obstructing plaintiffs from carrying out repairs of the roof of suit property.

3. It is the case of the plaintiffs that their father was tenant in the suit premises. Suit premises is the ancestral property of the defendants and their brothers. The plaintiffs are running the business of cushions in the suit property since their forefather. There is a relation of landlord and tenant between the plaintiffs and defendants.

4. The plaintiffs further stated that the defendants are residing in the backside of the suit property. As the defendants are not getting possession of the suit property from court, they started to damage the roof of the suit property, due to that, plaintiffs suffer heavy losses by the rainwater coming from the roof. Plaintiffs requested the defendants to repair the roof of the suit property from time to time, but the defendants deliberately avoided repairing the same.

5. It is the case of the plaintiffs that, it is the duty of the defendants to keep the suit property in tenantable condition. But they are avoiding the same and committed breach of statutory provisions. As well as the defendants are raising obstruction to the plaintiffs from carrying out the repairs of the suit property. Hence, plaintiffs have issued notice to the defendants through their advocate for making repair of the roof of the suit property. The defendants deliberately refused to accept the said notice. Despite issuing notice, the defendants failed to repair the roof of the suit property and also obstructed the plaintiffs from carrying out the repair. Hence, the plaintiffs have filed the suit and along with the suit they have filed the application Exh. 5 for temporary injunction.

6. The defendant Nos. 1 and 2 filed their written statement and say to the said application of temporary injunction. Defendants denied all the contentions of the plaintiffs in the plaint. Defendants further contended that the description of the suit property is not correct. Therefore, the suit is barred by the provision of Order VII Rule 3 of C.P.C. Suit property was never in possession of the plaintiffs. Plaintiffs have never done any business in the suit property. Plaintiffs had never paid any rent in respect of the suit property to the defendants. There is no agreement of landlord and tenant between the plaintiffs and defendants. Therefore, there is no relation of landlord and tenant between the plaintiffs and defendants.

7. The defendants further contended that suit property was in possession of the predecessor of the plaintiffs, but the predecessor of the plaintiffs Shri. Baburao Gaikwad had not paid the rent of the suit property either to the predecessor of the defendants or defendants after decision of suit and appeal. On the contrary, Baburao Gaikwad has shifted his business to another place. Meanwhile, Baburao Gaikwad died and after his death his legal heirs never did the business in the suit property. Legal heirs of

Baburao Gaikwad i.e. plaintiffs are not in possession of the suit property. As the plaintiffs have no concern with the suit property, they have no right to claim injunction against the defendants.

8. The defendants further contended that suit property is very old and in dilapidated condition and it is beyond repairs. As suit property cannot be repaired it needs to be newly constructed. The condition of the suit property has become dangerous. Therefore, suit property cannot be within ambit of tenantable repairs. The plaintiffs are trying to make new construction by obtaining injunction from court.

9. The defendants further contended that, the plaintiffs have issued the letter to the Municipal Corporation in order to collect the evidence. As the suit property is not in the condition of repairing and has become dangerous, the Municipal Corporation informed to remove the construction. The defendants have carried out the structural audit from Government valuer. As per the report of structural audit, the suit property is not in condition to use and requires to be dismantled.

10. The defendants contended that, the defendants are not the only owners of the suit property. The sons of Bashir Daruwale are also the owners of suit property and they have their undivided share in the suit property. Therefore, the suit is hit by the principle of non-joinder of necessary parties. The defendants have not received any notice from the plaintiffs. The contention of the plaintiffs in respect of service of notice is not correct. Therefore, the suit is not tenable.

11. The defendants contended that their family is very big and suit property is necessary for the family of the defendants. The suit property is in the heart of Nagar city. On the contrary, the plaintiffs are not the tenant and they have no need of the suit property. The plaintiffs have no prima

facie case and balance of convenience does not lie in favour of plaintiffs. The defendants will cause irreparable loss, if the injunction is granted. The plaintiffs are intending to get possession of the suit property by obtaining the order of injunction. Hence, they requested to reject the application for temporary injunction.

12. After hearing of both the parties, the learned 13th Jt.C.J.S.D., Ahmednagar partly allowed the application Exh. 5. Being dissatisfied with the said order, the appellants i.e. original defendants filed the present Misc. Civil Appeal.

13. Heard learned advocate Shri. S. S. Kakde for the appellants i.e. original defendants and learned advocate Shri. S. R. Bihani for the respondent i.e. original plaintiffs.

14. The learned advocate for the appellants i.e. original defendants submitted that the plaintiffs i.e. original/respondents are not tenants of the suit property and they have never paid any rent to the defendants. The father of the plaintiffs had already surrendered and handed over the possession of the suit property, and therefore, no tenancy subsists in favour of the plaintiffs. Therefore, there is no agreement of tenancy between the parties. It was further submitted that, the defendants are not the exclusive owners of the suit property, as the property is the joint family property in which two other persons also have rights. The learned advocate for appellants further submitted that the suit for injunction under section 38 of Specific Relief Act is not maintainable in the absence of the provision of any enforceable right in favour of the plaintiffs. The learned advocate for the appellants further submitted that the learned trial court has, while deciding the application for temporary injunction, recorded a finding in respect of alleged tenancy and has proceeded on the basis that the plaintiffs are tenants. It was further submitted that when the relationship of landlord

and tenant is seriously disputed, such disputed question cannot be finally decided while considering an application for temporary injunction. Therefore, requested to allow the appeal and set aside the order of granting injunction.

15. The learned advocate for the respondent i.e. original plaintiffs submitted that the earlier litigation between the predecessor of the parties supported the submission of the plaintiffs that the father of the plaintiffs was tenant in the suit property. He further submitted that the defendants have not pleaded in their written statement that the father of the plaintiffs had surrendered, handed over the possession of the suit property and no document, possession receipt, date or other material has been produced to establish such alleged surrender. It was further submitted that after the death of original tenant the tenancy did not automatically come to an end and the plaintiffs, being his legal heirs, continued in possession of the suit premises. The learned advocate for the respondent further submitted that the plaintiffs had called upon the defendants to carry out the necessary repairs to the tenanted premises, but despite such notice the defendants failed to do so, and therefore the plaintiffs approached the Municipal Corporation for permission to carry out the repairs. The learned advocate further submitted that as per provision of section 14 of Maharashtra Rent Control Act, 1999, the landlord is under an obligation to keep the premises in tenantable repair and in the circumstances contemplated by the said provision, the tenant is entitled to undertake necessary repairs. It was further submitted that for deciding the question of lawful possession and entitlement of interim protection, the court is required to consider prima facie whether the plaintiffs have the status of tenant and therefore finding related to the tenancy is not erroneous. It was further submitted that the present injunction is sought only against the defendants who are actually

obstructing the possession from carrying out the necessary repairs. Therefore, other owners of the suit property are not necessary parties to the suit for injunction. He further submitted that the plaintiffs have established a prima facie case, the balance of convenience lies in their favour and irreparable loss would be caused to the plaintiffs, if, the defendants are not prevented from obstructing the plaintiffs from carrying out necessary repairs to the damaged premises of the suit property. Hence, he submitted that the Miscellaneous Civil Appeal may be dismissed.

16. Following points arose for my determination. I have recorded my findings thereon for the reasons stated thereunder.

Sr. No.	Points	Findings
1.	Whether the exercise of discretion by the learned 13 th Jt.C.J.S.D., Ahmednagar in granting temporary injunction in favour of plaintiffs is judicious and justifiable ?	Yes.
2.	Whether the interference by this court is warranted in the impugned order ?	No.
3.	What order ?	Misc.C.Appeal is dismissed with costs.

:: REASONS ::

17. The scope of miscellaneous civil application against the order of granting or rejection of temporary injunction is limited. It is well settled that if the trial court has exercised the discretion reasonably and in a judicious manner, the appellate court will not interfere with the trial court's said discretion, though, the appellant court may have different conclusion in the matter. The appellant court is not expected to substitute its own

discretion merely because another view is possible. Considering the aforesaid legal position the present miscellaneous civil appeal needs to be decided.

As to point No. 1 :-

18. In the present matter, the first question is whether the learned Trial Court has rightly exercised its discretion in granting temporary injunction in favour of the plaintiffs. The plaintiffs are seeking protection for carrying out necessary repairs to the damaged roof of the suit premises. Perusal of the photographs on record and submissions of the parties shows that some portion of the roof of the tenanted premises is collapsed. Therefore, the request of the plaintiffs for carrying out necessary repairs cannot be said to be without any basis.

19. The main objection of the defendants is that the plaintiffs are not tenants of the suit premises. According to the defendants, there is no agreement of tenancy between the parties and the plaintiffs have never paid rent to the defendants. It is also their contention that the father of the plaintiffs had surrendered and handed over possession of the suit premises.

20. At this stage, it is not necessary to finally decide whether the plaintiffs have established tenancy in accordance with the evidence required at the trial. The Court is required to consider whether the material available on record makes out a prima facie case in favour of the plaintiffs.

21. In this regard, the judgment in Regular Civil Suit No. 524/1983 dated 29/12/1987 is relevant. The said suit was filed by the father of the present defendants and other co-owners against the father of the plaintiffs for recovery of rent and possession of the suit property. The said suit came to be dismissed. The father of the defendants and other co-owners preferred Regular Civil Appeal No. 480/1988 against the said

judgment and the said appeal was also dismissed by judgment dated 09/03/1999.

22. The aforesaid earlier litigation is relevant for considering the prima facie case of the plaintiffs. The said litigation shows that the father of the plaintiffs was claiming possession of the suit premises as tenant and the father of the defendants and other co-owners had filed proceedings for recovery of rent and possession. Therefore, at this stage, it cannot be said that the claim of the plaintiffs regarding tenancy is totally baseless.

23. The defendants have contended that the father of the plaintiffs had surrendered the tenancy and handed over the possession of the suit property. However, there is no documentary evidence on record showing that the father of the plaintiffs had surrendered the tenancy and handed over the possession of the suit property to the defendants. There is also no document showing that after the death of the father of the plaintiffs, the plaintiffs had surrendered the tenancy or handed over possession of the suit property to the defendants.

24. In absence of such material, prima facie it appears that after the death of the father of the plaintiffs, the plaintiffs continued in possession of the suit premises on the basis of the tenancy claimed by them. Whether the plaintiffs have finally inherited the tenancy and whether there was any subsequent surrender or termination of tenancy are matters which can be decided after recording evidence. At this stage, it is not proper to finally decide the said disputed question.

25. The plaintiffs have also stated that they issued notice to the defendants to carry out necessary repairs to the roof of the suit premises. It is their case that despite such notice, the defendants failed to carry out the repairs. Thereafter, the plaintiffs also approached the

Municipal Corporation by issuing a letter for permission to carry out the repairs.

26. The conduct of the plaintiffs in first calling upon the defendants to carry out repairs and thereafter approaching the Municipal Corporation for permission is relevant while considering their prima facie case. It shows that the plaintiffs are seeking to carry out repairs to the damaged portion of the premises and not, at this stage, seeking any declaration of ownership over the suit property.

27. Before hearing the arguments on the application for temporary injunction, the plaintiffs filed an application for appointment of Court Commissioner for inspection and measurement of the collapsed portion of the suit property. The said application was allowed and a Civil Engineer of the Municipal Corporation was appointed as Court Commissioner. Accordingly, he inspected the suit property on 22/05/2026 and submitted his report. As per his report, a portion of the roof measuring 1.8 metres $\times$ 2 metres had collapsed and the said portion can be repaired by using lightweight building material. On the other hand, the defendants got the suit property inspected privately and filed the report of the Chartered Engineer, who inspected the suit property on 03/02/2026. As per the said report, the old roof had collapsed due to heavy load and the suit property was not suitable for use. Therefore, demolition of the existing structure and construction of a new building was advised. Both sides have made their submissions on these reports. The plaintiffs have supported the report of the Court Commissioner and submitted that the collapsed portion can be repaired. On the contrary, the defendants have supported the report of the Chartered Engineer and submitted that the property is not suitable for use and requires demolition and reconstruction. Both the reports show that a portion of the roof has collapsed. Therefore, there is no dispute about the

fact that a portion of the roof has collapsed. The main question is whether the said collapsed portion can be repaired or not. The Court Commissioner, being a Civil Engineer of the Municipal Corporation, has specifically opined that the collapsed portion can be repaired by using lightweight building material. The report relied upon by the defendants does not specifically state that the collapsed portion cannot be repaired. It only states that the suit property is not suitable for use and advises demolition and new construction. Therefore, at this stage, the report of the Court Commissioner supports the case of the plaintiffs that the collapsed portion can be repaired.

28. The learned advocate for the appellant, during course of argument submitted that the court commissioner cannot be appointed at the initial stage of the matter and that too for collecting the evidence. In support of his submissions he relied upon the following authorities-

- 1) ***Dnyandeo Vitthal Salke Vs. Dagdu Kadar Inamdar, 2017 Supreme(Bom) 184 and***
- 2) ***Ismail Saifuddin Saifi Vs. Kishor S/o. Narottam Patil, 2026 Supreme (Bom) 180.***

I gone through the above judgments. In our case in hand the application seeking appointment of court commissioner is already allowed and said order has not been challenged by the either party. Court commissioner carried out the inspection and filed the report on record. Court commissioner was not appointed for submissions of report in respect of possession. It appears that the facts of the above authorities and the facts of the case in hand are not same and identical but different. Therefore, with due respect to the above authorities, I hold that the above authorities are not helpful to the appellants for deciding the present application.

29. The plaintiffs have relied upon Section 14 of the Maharashtra Rent Control Act, 1999. The said provision recognizes the obligation of the

landlord regarding repairs to the premises and also provides for the right of the tenant to undertake repairs in the circumstances contemplated by the provision. Therefore, the claim of the plaintiffs to carry out necessary repairs cannot be said to have no legal basis.

30. It is also important to note that the physical condition of the premises is supported by the report of the court commissioner. Some portion of the roof is collapsed. Therefore, if the necessary repairs are not carried out, there is possibility of further deterioration of the premises and the plaintiffs may suffer loss.

31. At the same time, the Court has to take care that the interim order should not amount to finally deciding the disputed tenancy or granting any right to make new construction. The protection, therefore, can be confined only to necessary repairs to the damaged roof and subject to law and permission of the competent authority, if required.

32. Thus, considering the earlier litigation between the predecessors of the parties, absence of any document showing surrender of tenancy, claim of continued possession by the plaintiffs, damaged condition of the roof, notice issued by the plaintiffs to the defendants for carrying out repairs and the approach made by the plaintiffs to the Municipal Corporation, I am of the view that the plaintiffs have established a prima facie case.

33. As regards balance of convenience, the plaintiffs are in possession of the premises and some portion of the roof is already collapsed. If they are prevented from carrying out necessary repairs, the condition of the premises may further deteriorate. On the other hand, if the injunction is confined only to necessary repairs, no final right of the defendants is decided. Therefore, the balance of convenience lies in favour of the plaintiffs.

34. As regards irreparable loss, if the plaintiffs are not permitted to carry out necessary repairs, further damage may be caused to the premises due to rainwater. Such loss may not be adequately compensated by monetary compensation. Therefore, irreparable loss will be caused to the plaintiffs if the injunction is not granted.

35. Thus, the plaintiffs have established the three necessary ingredients for grant of temporary injunction, namely, prima facie case, balance of convenience and irreparable loss. The learned Trial Court has therefore rightly exercised its discretion in granting temporary injunction in favour of the plaintiffs. Hence, I answer Point No. 1 in the affirmative.

As to Point No. 2 :-

36. The next question is whether interference by this Court in the impugned order is warranted. The scope of interference by the appellate Court against an order granting temporary injunction is limited. If the learned Trial Court has exercised its discretion reasonably and in a judicious manner, the appellate Court should not interfere merely because another view is possible.

37. In the present matter, the learned Trial Court has considered the material placed on record and has found that the plaintiffs have a prima facie case, the balance of convenience lies in their favour and irreparable loss would be caused to them if injunction is not granted.

38. The material discussed above also supports the findings of the learned Trial Court. Therefore, I do not find any perversity, illegality or improper exercise of discretion by the learned Trial Court. The learned Trial Court has exercised its discretion on the basis of the material available before it and has applied the settled principles for grant of temporary

injunction. Hence, no interference is warranted in the impugned order. Hence, I answer Point No. 2 in the negative.

As to point No. 3 :-

39. With reference to the above reasons and findings to point Nos. 1 and 2 the present miscellaneous civil appeal deserves to be dismissed. In the result, in answer to point No.3, following order is passed -

:: ORDER ::

1. The Miscellaneous Civil Appeal is dismissed with costs.
2. Inform the learned 13th Jt. Civil Judge Senior Division, Ahmednagar, accordingly.

Date: 12.08.2026.

(R. D. Chavan)
Ad-hoc District Judge - 4,
Ahmednagar.

CERTIFICATE

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

Name of Stenographer	:	H. R. Sase, Stenographer Grade-I
Name of the Court	:	Ad-hoc District Court-4, Ahmednagar.
Date of Judgment	:	12.08.2026
Signed by Presiding Officer on	:	12.08.2026
Judgment Uploaded in CIS on	:	12.08.2026