

(2000) 09 BOM CK 0088

In the Bombay High Court

Case No : Appeal Against Order No. 19 of 2000

Maneklal Jainarayanji Sabu

APPELLANT

Vs

Ruprao Ganpatrao Bhonde

RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 100

Citation : (2000) 4 ALLMR 841 : (2001) 2 BomCR 71 : (2000) 4 MhLj 450

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : J.T. Gilda, for the Appellant; M.V. Mohokar, for the Respondent

Judgement

A.M. Khanwilkar, J.—Admit. Heard forthwith by the consent of the learned Counsel for the parties.

This appeal takes exception to the order passed by the 2nd Additional District Judge, Achalpur, dated February 10,2000, below Exhibit 5, in Regular Civil Appeal No. 88 of 1998. The impugned order passed by the Court below reads, thus :---

"Heard the argument made by the Counsel of both sides and perused the record.

The lower Court dismissed the claim of the appellant. And he came before this Court to challenge the correctness of the said order. Now, he has put this application for the grant of the relief by the interim order. Thus, the relief is to be granted or rejected by the order on merit cannot be granted by the interim order and it is when the lower Court rejected it on merit. Hence, the application is hereby rejected."

2. In my view, this is not the correct approach adopted by the lower Appellate Court while refusing interim relief, especially when the appeal is admitted and pending before it. Merely because the trial Court has negated the plea of the appellant, would not disentitle the appellant for grant of interim relief, unless other special reasons are recorded in that behalf. In the circumstances, the

impugned order cannot be sustained in law.

3. It is rightly contended by the learned Counsel for the appellant that the interim arrangement had continued between the parties for over last ten years pursuant to the agreement reached between them, which is reflected in the order dated 20th April, 1993, in view of the undertaking dated 25-10-1989. In the circumstances, the said interim arrangement shall continue till the appeal is finally disposed of by the Additional District Judge, or till such time the lower Appellate Court finds that the appellant has become disentitled for such relief, for the reasons to be recorded in that behalf. The lower Appellate Court is directed to decide the appeal, being Regular Civil Appeal No. 88/1998 expeditiously, preferably within six months from the receipt of this order.

This appeal succeeds, with no order as to costs.