

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10734 OF 2019

RAJENDRA JALINDER KHANDEKAR
VERSUS
SARASWATIBAI NAMDEO MADNE

...

Advocate for Petitioner : Shri Salunke V.D.

Advocate for Respondent : Shri Patil Nileshsingh J.

...

CORAM : RAVINDRA V. GHUGE, J.

Dated: August 31, 2019

...

PER COURT :-

1. I have heard the learned Advocates for the respective sides for quite some time and have perused the petition paper book with their assistance.
2. The issue involved in this case is as regards a protection granted to the petitioner by order dated 14.6.2019, below application Exhibit 5, in CMA No.77 of 2019, by the learned District Judge-1, Osmanabad. Notices were issued to the respondents and the Circle Officer, Tuljapur was directed not to initiate action as per the notice dated 14.6.2019. This protection was continued by order dated 21.6.2019, 10.7.2019, 22.7.2019, 23.7.2019 and 5.8.2019. On 13.8.2019, the same learned District Judge has passed the impugned order that the file is now transferred to the learned Principal District

Judge and judicial discipline needs to be observed. However, in the same order, the learned District Judge-1 records that the ad-interim protection granted on 14.6.2019 shall not continue.

3. On 21.8.2019, when the matter was taken up by the learned Principal District Judge, though Exhibit 5 is pending and CMA No.77 of 2019 is posted on 5.9.2019 for a final hearing, the protective order was not continued.

4. The learned Advocate for the respondent has strenuously opposed this petition and submits that the same be rejected by imposing heavy costs. The learned Advocate for the petitioner points out from the averments in paragraph No.12 of the memo that the learned Principal District Judge had orally stated in the Court that he has a few days to retire and therefore, would not be able to hear the matter.

5. I find that after a judicial officer applies his mind to the case and passes a reasoned ad-interim order, such a relief/order is not to be vacated until the matter is heard further and the Judge is convinced that the order deserves to be vacated. Once an order is passed judiciously, even at an ad-interim stage, vacating such orders for no justifiable reason and without hearing the matter on its merits,

is likely to create a scope for whims and caprice.

6. This petition is, therefore, partly allowed. The orders dated 13.8.2019 and 21.8.2019, below Exhibit 24, stand quashed and set aside.

7. The litigating sides shall appear before the Court entrusted with CMA No.77 of 2019, on 5.9.2019 and on any such date as may be convenient to the learned Judge, shall advance their final arguments in the said proceedings. After the hearing is concluded, the learned Judge would deliver it's reasoned order as expeditiously as possible and in any case, on/or before 19.10.2019. Until then, the ad-interim order dated 14.6.2019 passed below Exhibit 5 in CMA no.77 of 2019, shall continue.

(RAVINDRA V. GHUGE, J.)

...

akl/d