

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 3549 OF 2014

YASHWANT JEEVAN MASAL

VERSUS

RAMESH TRAMBAK DAREKAR AND OTHERS

...

Advocate for Petitioner : Mr. Kulkarni Mukul S.

Advocate for Respondent Nos.1 to 4 : Mr. Patil Shrikant S.

...

CORAM : **N. W. SAMBRE, J.**

DATE : 06th May, 2015.

Per Court:

1 The Respondents – Defendants suffered temporary injunction and also chose to remain absent in the suit for simplicitor injunction initiated at the behest of the Petitioner resulting into ordering ex-parte order against them. Application Exhibit – 49 came to be moved by the Defendants praying therein setting aside ex-parte order.

2 The trial Court granted the same by an order dated 20th November, 2013. As such, the present petition.

3 The learned counsel for the Petitioner – Plaintiff would urge that the approach on the part of the present Respondents –

Defendants is negligent and so as to substantiate the same has taken me through the contents of the application, their conduct and the objection raised by the present Petitioner to the application for setting aside the ex-parte order. He would urge that even if assuming that there was a compromise, still the trial Court should not have been ignorant of the scheme of the provisions of Order 9 Rule 6 as according to him there is no sufficient cause or reason brought before the trial Court for setting aside the order. He would urge that the trial has reached at the concluding stage and the trial Court should not have been generous to cause interference at such a stage.

4 Mr.Patil, learned counsel would urge that after receipt of the suit summons, the Respondents – Defendants approached the committee existing in the village for amicable resolution of the dispute. Pursuant thereto an oral agreement was reached between the Plaintiff and Defendants. As such, the Defendants have chosen not to attend the suit proceedings in view of the understanding between the Plaintiff and Defendants as Plaintiff assured them that he shall inform the trial Court about the said development. He submits that said fact could be noticed from the affidavit of various

persons, which appears on record whereby the fact about arriving at a settlement was very much established.

5 The learned trial Court by its order impugned has allowed the application subject to payment of costs of Rs.1,000/-.

6 While allowing the application though the learned trial Court has not discussed the reasons in detail, however, this Court cannot be ignorant of the fact that there exists a protection in favour of the Petitioner by way of an order of temporary injunction. Even if the contentions of the Petitioner is accepted that the suit has reached at the stage of conclusion, however, the fact about the settlement in between the parties, in my opinion, was appropriately established before the Court below particularly in light of the affidavit placed on record by the Respondents – Defendants of Dilip Nikam, Kailash Parkhe, Brijlal Shankar Zhalte etc. who were not cross-examined by the Petitioner. In that view of the matter, in my opinion, the order dated 20th November, 2013, does not call for any interference. However, the costs as is ordered by the trial Court is enhanced from Rs.1,000/- to Rs.3,000/- to be deposited before the trial Court within a period of two weeks from today.

7 Writ Petition stands disposed of with above observations.

[N. W. SAMBRE, J.]

ndm