

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 920 OF 2014
WITH
CIVIL APPLICATION NO. 9684 OF 2014

Pramod Jaychand Sand,
Age: 49 years, Occupation agriculture
and business, resident Rahata,
Tal. Rahata, Dist. Ahmednagar

...PETITIONER
(Orig. Defendant No. 3)

VERSUS

Shrimati Rajani Ranjan Khanolkar,
Age: 38, Occupation Agriculture
and Service, Resident of CB Wing,
Hemkunj, Mamlatdarwadi, Malad(West),
Mumbai

...RESPONDENT
(Orig. Plaintiff)

Mr Suresh Kulkarni, Advocate holding for Mr C. V. Korhalkar, Advocate for
petitioner;
Mr N. L. Jadhav, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 9th March, 2015

ORAL ORDER

By this writ petition, the petitioner/original defendant no.3, seeks to challenge the order dated 6th March, 2013, passed by Joint Civil Judge Junior Division, Rahata, below Exh.115, in Regular Civil Suit No.29 of 2004, whereby his prayer for passing a decree in terms of compromise deed Exh.87, in view of provisions of Order XXIII, Rule 3 of the Code of Civil Procedure, came to be turned down.

2. The respondent/plaintiff has instituted Regular Civil Suit No.29 of 2004, seeking injunction in relation to a immovable property.

3. The petitioner claims that the aforesaid suit came to be compromised vide Exh.87 on 15th December, 2006 and a compromise purshis, to that effect, was passed. According to the petitioner, subsequent application Exh.115 came to be moved praying therein disposal of the suit in terms of the compromise by reserving his right to agitate cause of abatement. According to the learned Counsel, the application Exh.115, moved in view of the provisions of Order XXIII, Rule 3 of the Code of Civil Procedure, ought to have been allowed by the Trial Court. He would further urge that execution of the compromise, filing of the same before the Court and honouring the terms thereof, takes party to the only conclusion that the said compromise was acted upon. He submits that the formality that remained to be incorporated, is passing of a decree in terms of the compromise, in view of the provisions of Order XXIII, Rule 3 of the Code of Civil Procedure.

4. Learned Counsel appearing on behalf of the respondent/plaintiff would urge that the order passed by the Court below speaks a lot about the conduct of the present petitioner. He would urge that the interest of the plaintiff was initially represented by Advocate Mr Gujrathi and thereafter by Advocate Mr Somwanshi. Without obtaining no objection

from the said Advocates, a purshis (Exh.94) came to be moved, seeking discharge of those Advocates and also for withdrawal of the power of attorney on behalf of the plaintiff. He would further urge that application Exh.93 which was moved along with Exh.94 stated above, for taking the case on board. According to him, defendant no.1 expired and his death certificate was sought to be placed on record by virtue of Exh.91 along with application Exh.90. He further urged that the power of attorney holder Shaukat Khan has expired on 27th January, 2007 and the fact about execution of the compromise, performance in terms thereof and further act based on the terms of the compromise, is disputed. In support of his contention, he has taken me through the conduct of the petitioner/defendant no.3. Learned Counsel urged that the plaintiff is disputing the terms of compromise and the order impugned herein is in tune with the requirement of Order XXIII, Rule 3 of the Code of Civil Procedure. He, therefore, prayed for dismissal of the writ petition.

5. Upon giving thoughtful consideration to the issue sought to be canvassed before this Court and upon testing the same in the light of provisions of Rule 3 of Order XXIII of the Code of Civil Procedure, it is required to be noted that the satisfaction of the Court while recording of such compromise is need of the statute. Once the Court is not satisfied about *bona fides* and conduct of the parties, the power vests with the Court to refuse recording of such compromise. While rejecting application

Exh.115, whereby the claim of the petitioner for recording compromise and drawing a decree to that effect, is rejected, the learned Trial Court has considered the manner in which the proceedings of the suit are conducted since 15th December, 2006, i.e. the date on which the alleged compromise was entered into. The Trial Court has taken note of the fact that Exhs. 81 and 82 were moved by defendant no.2 pointing out certain developments, which took place after the alleged compromise was entered into. The learned Court below was alive to the fact as regards discharge of Advocate Mr Somwanshi and passing of the order by the Trial Court on 15th December, 2006 as regards said discharge, without taking no objection from the said Advocate. The Trial Court has also considered the eventuality, such as the cause for issuance of fresh notice to the plaintiff and defendants no.1 and 2 on 15th December, 2006 and cancellation of the appearance of Advocate Mr P. D. Gujrathi (he is discharged from the case) moved by late Shaukat Khan, who was power of attorney for defendant no.2.

6. The subsequent order dated 15th December, 2006 and the objection to the compromise Exh.87 expressed by the plaintiff, is also taken into account by the Court below while rejecting the application Exh.115.

7. *Prima facie*, from the conduct of the parties before the Court below, the Court below has rather expressed its dissatisfaction on the *bona fides*

of the compromise being entered into. The Trial Court, while alive to the fact as regards requirement under Order XXIII, Rule 3 of the Code of Civil Procedure, has noted that the application Exh.115, in which a prayer for passing of a decree on the basis of the compromise was made, was liable to be rejected and accordingly rejected the same.

8. In my opinion, the reasons and eventualities narrated in the impugned order are as per mandate of Order XXIII, Rule 3 of the Code of Civil Procedure. The learned Trial Court being alive to the entire events which took place before it, during the course of conduct as regards recording of compromise and the manner, in which subsequent thereto, the matter was pursued before it, in my opinion, has rightly taken a view of rejecting the application Exh.115.

9. In the light of what has been stated above, no case for interference is made out. The writ petition being devoid of merit stands rejected with no order as to costs.

10. In view of rejection of the writ petition, Civil Application No.9684 of 2014 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

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