

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3706 OF 2014

Chandar T. Patil .. Petitioner
vs.
Baburao I. Patil and anr. .. Respondents

Mr. N.J. Patil for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 8 May, 2015.

P.C. :-

1] The learned counsel for the petitioner states that the respondents have been duly served in this matter and necessary affidavit of service has also been filed.

2] By an order dated 7 April 2014, parties were put to notice that the matter may be heard and disposed of finally at the admission stage. Therefore, Rule.

3] This petition impugns the order dated 14 March 2014, by which the learned Civil Judge has framed the following two additional issues, which read thus:

12] Whether suit of plaintiff is bad for want of Notice under "sec.164 of Maharashtra Cooperative Society of 1960?"

13] Whether suit is bad for Non-joinder of necessary & essential of parties ?

4] The aforesaid additional issues came to be framed when the civil suit is at an advanced stage of hearing. In so far as, the issue concerning Notice under Section 164 of the Maharashtra Cooperative Society Act, 1960 (said Act) is concerned, the same is

really an issue of law. The petitioner, in the plaint has clarified that since no relief is applied for against respondent No.2-society, there was no necessity of issuance of Notice under Section 164 of the said Act. No prejudice as such will occasion the petitioner, even if such issue is framed, because, on account of framing of said issue, there would be no necessity of any additional evidence in the matter. Accordingly, without expressing any opinion on the issue as to whether or not such Notice was necessary, framing of the first issue concerning Notice under Section 164 of the said Act is not disturbed.

5] In so far as the second issue is concerned, however, there is absolutely no necessity for framing of such an issue particularly at a belated stage. The only reason stated by respondent No.1 for framing of such an issue is that the name of Shree Warana Sahkari Sakhar Karkhana Limited appeared in the property card concerning the suit property. This is, by no means sufficient at this stage for framing of an additional issue. Ultimately, the suit is seeking specific performance of an agreement as against respondent No.1. Any decision in this suit, will not in any manner bind Shree Warana Sahkari Sakhar Karkhana Limited, which is not a party to the suit. It also does not appear to be the case of respondent No.1 that the said Shree Warana Sahkari Sakhar Karkhana Limited is the owner of the suit property, in respect of which the specific performance has been applied for. For all these reasons, the impugned order, in so far as it frames the second issue with regard to non-joinder of parties is set aside.

6] Rule is made absolute to the aforesaid extent only. There, shall be no order as to costs.

7] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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