

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6386 OF 2014**

Bhanudas Govind Raibage

..Petitioner

Vs.

Dr. Sou Medha Balasaheb Jadhav & Ors.

..Respondents

Mr. Amit Borkar for the Petitioner

None for the Respondents

**CORAM : R. M. SAVANT, J.
DATE : 14th SEPTEMBER, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against two orders both dated 2-5-2014, passed by the Learned 4th Civil Judge Senior Division, Kolhapur. By the first order, the application Exhibit 93 came to be rejected and by the second order, the application Exhibit 107 came to be rejected.

2 In so far as the application Exhibit 93 is concerned, the same was filed by the Respondent No.9 herein for his impleadment in the Suit being Special Civil Suit No.98 of 2011. The said application was founded on the fact that the Respondent No.9 is a co-sharer. The said application was opposed to on behalf of the Petitioner herein i.e. the Defendant No.2 on the ground that the share of the Respondent No.9 in the property in question has already been purchased by the Defendant No.2 pursuant to the auction held by the Kolhapur Mahila Sahakari Bank Ltd., which auction has been confirmed right up to this

Court.

3 The Trial Court considered the said application and allowed the same on the ground that the Respondent No.9 is a co-sharer and in so far as the auction is concerned, it has been averred in his application that he has taken legal action against the Defendant Nos.1 to 3 alleging deception and fraud etc., in respect of the said auction. The Trial Court was of the view that the Respondent No.9 herein is required to give an opportunity to put up his defence.

4 The Learned Counsel appearing on behalf of the Petitioner would contend that since the share of the Respondent No.9 herein has already been purchased in the auction that was held by the said Bank, his impleadment is not necessary.

5 It is required to be noted that the challenge to the impleadment is at the behest of the Defendant No.2 and not the original Plaintiff. What has weighed with the Trial Court is the fact that the Respondent No.9 was a co-sharer. In so far as the share of the Respondent No.9 is concerned in respect of which according to the Petitioner an auction took place in which auction he has purchased the said share. The said fact would impinge upon the defence that the Respondent No.9 may take in the Suit, which is for the Trial Court to

consider at the appropriate stage. In my view therefore, the order passed on Exhibit 93 allowing the said application cannot be found fault with.

6 In so far as the application Exhibit 107 is concerned, as indicated above the same was also decided by an order passed on the same day i.e. 2-5-2014. By the said order, the said application Exhibit 107 has been rejected. The said application has been filed by the Petitioner / Defendant No.2 for passing the decree on admission in favour of the Plaintiff. The Trial Court has rejected the said application and having regard to the reason which finds place in the impugned order. The Trial Court seems to be of the view that the said admission is not clear and unequivocal so as to entitle it to pass a decree on admission. It is also required to be noted that the said application Exhibit 107 has been filed by the Defendant No.2 and not by the original Plaintiff praying that a decree on admission be passed.

7 In my view therefore, no case for interference in the Writ Jurisdiction of this Court is made out, the Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order