

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7818 OF 2015

Premji S. Wagh	...	Petitioner
Vs.		
Dena Bank	...	Respondent

Mr. U. L. Shah for Petitioner.
Mr. K. D. Shukla for Respondent.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 17, 2015

P.C. :

Heard Mr. Shah, learned Counsel for petitioner and Mr. Shukla, learned Counsel for respondent at length. Rule. Mr. Shukla waives service for respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, original defendant No.2 has challenged the judgment and order dated 18.06.2015 passed by the learned Judge, City Civil Court, Greater Mumbai below exhibit-3 in Summary Suit No.7780 of 2000. By that order, the learned trial Judge partly allowed the application exhibit-3 taken out by the defendant No.2 for setting aside order dated 10.03.2014 and for dismissing the Suit for not taking out summons for judgment for last 13 years. In support of this Petition, Mr. Shah submitted that the learned trial Judge has considered Rule 227 of the Bombay High Court (Original Side) Rules, 1980 (for short 'Original Side Rules'). However, the learned trial Judge has not considered Rule 119 and in particular sub-rule (4) of the Bombay City Civil Courts Rules, 1948 (City Civil Courts Rules). He submitted that the scheme of Rule 227 of the

Original Side Rules and Rule 119 of the City Civil Courts Rules is different and they are not *pari materia*.

3. Mr. Shukla submits that by consent of the parties, the impugned order may be set aside with direction to the trial Court to consider Rule 119(4) of City Civil Courts Rules and pass appropriate order.

4. Rule 227 of the Original Side Rules read thus,

“R.227. When no decree applied for within six months.- If the plaintiff does not apply for a decree within six months after the filing of the plaint, the suit shall be set down for dismissal on the board of the JUDGE in Chambers. The Prothonotary and Senior Master shall notify on his notice board the date on which the suit is to be so set down and shall do so at least either days before such date. If the plaintiff is appearing in person, the Prothonotary and Senior Master shall give notice of the date to the plaintiff by sending a letter to him by post under certificate of posting.”

5. Rule 119(4) of the City Civil Courts Rules reads thus,

“119(4) When no decree applied for within six months.- If the plaintiff does not apply for a decree within six months after the filing of the plaint, the suit shall be set down on the daily cause board for dismissal before the Sitting Judge in Chambers, one week before the day fixed for such dismissal. Upon the day fixed for such dismissal, the suit shall be called on before the Sitting Judge in Chambers and shall be dismissed if the plaintiff fails to appear, or appearing fails to satisfy the Judge that he has sufficient cause for not having proceeded with his suit.”

6. Perusal of these rules clearly shows that Rules 119 and 227 are not *pari materia*. The learned trial Judge ought to have considered effect of Rule 119. Perusal of the impugned order shows that the learned trial Judge has not even referred to Rule 119. In view thereof, by consent of the parties, Writ Petition is disposed of in the following terms:

- a. The impugned order dated 18.06.2015 is quashed and set aside;
- b. Application (exhibit-3) is restored to the file of the learned trial Judge;

- c. The learned trial Judge will consider Rule 119 and in particular sub-rule (4) of City Civil Courts Rules and pass appropriate order in that regard;
- d. All contentions of the parties on merits are expressly kept open;
- e. Rule is made absolute in the aforesaid terms with no order as to costs.

7. Order accordingly.

(R. G. KETKAR, J.)

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