

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.964 OF 2014
WITH
CIVIL APPLICATION NO.548 OF 2014
WITH
CIVIL APPLICATION NO.547 OF 2014

Karan Luthra ... Petitioner
Vs.
Ajit Sagun Naik and others ... Respondents

Mr. Glenn Anthony Lobo for Petitioner.
Mr. Hemant Ghadigaonkar for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 27TH JULY, 2015

P.C. :

Heard Mr. Lobo, learned Counsel for petitioner and Mr. Ghadigaonkar, learned Counsel for respondent No.1 at length. Mr. Lobo orally seeks leave to delete respondents No.2 to 5. Leave as prayed for is granted. Amendment shall be carried out within 1 week from today. Rule. Mr. Ghadiagonkar waives service on behalf of respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant No.3(a) has inter alia prayed for - (a) transfer of the Suit from the file of respondent No.6 to some other Court; (b) setting aside the order dated 09.07.2014 passed by the learned trial Judge among other prayers.

3. Mr. Ghadigaonkar submitted that by order dated 09.07.2014, the learned trial Judge has observed that as he had issued notice under

Contempt of Courts Act, 1971, and also ordered disciplinary action against the lawyer and the parties, he does not desire to conduct the matter. Apart from that, the learned trial Judge, who passed the orders on 02.05.2014 and 09.07.2014, is no longer Judge of that Court. Mr. Lobo has not disputed this. In view thereof, prayer clause (a) of the application has become infructuous.

4. As far as prayer clause (b) is concerned, Mr. Lobo submitted that on 02.05.2014, original plaintiff filed application exhibit-74 for appointing the Court Commissioner for recording evidence of P.W.1 on the ground that he is diagnosed with T.B. and his situation is very critical. P.W.1 is counting his last days. Because of the T.B. and infirmity, P.W.1 is unable to attend the Court. Mr. Lobo submitted that the learned trial Judge passed the order on the same day without hearing defendants and appointed Mr. Manoj P. Mhate as Court Commissioner for recording evidence of P.W.1. In view thereof, objections were lodged on 08.07.2014 at exhibit-80. Mr. Lobo, upon taking instructions from defendant No.3(b), who is present in the Court, states that if the order dated 02.05.2014 is set aside, he will withdraw the allegations made in the Objection Petition filed on 08.07.2014 at exhibit-80 as also in the impugned order dated 09.07.2014 against respondent No.6.

5. Mr. Ghadigaonkar does not dispute that the order was passed on 02.05.2014 without hearing the defendants. I was inclined to set aside that order only on this ground and restore exhibit-74 for deciding it afresh. He submits that P.W.1 is now attending the Court proceedings. He, therefore, seeks permission to withdraw the application exhibit-74 with liberty to take out appropriate application in the trial Court.

6. Perusal of the order dated 02.05.2014 shows that the said order

was passed without hearing Advocate for the defendants. In my opinion, the learned trial Judge should have heard the defendants before passing the order on 02.05.2014 of appointing Commissioner. Having regard to the fact that P.W.1 now wants to withdraw application at exhibit-74 and file fresh application for appropriate reliefs, the order dated 02.05.2014 is hereby quashed and set aside.

7. As far as the order dated 09.07.2014 is concerned, the statement made by Mr. Lobo, on instructions, that defendants are withdrawing allegations contained in the Objection Petition filed on 08.07.2014 at exhibit-80 as also in the impugned order dated 09.07.2014 against respondent No.6, is accepted. The allegations made against respondent No.6 in exhibit-80 as also in the impugned order dated 09.07.2014 stand withdrawn.

8. In view thereof, order dated 09.07.2014 is also set aside. If fresh application is taken out by the plaintiff in view of the withdrawal of exhibit-74, the same shall be dealt with in accordance with law.

9. Mr. Ghadigaonkar states that the applicant has also made allegations against the previous Judge in the present C.R.A. as well as in the affidavit in support of Motion No.339 of 2013. Mr. Lobo states that he will withdraw those allegations and adopt appropriate proceedings before the appropriate forum. In view thereof, those allegations also stands withdrawn from the present C.R.A. as well as in the affidavit in support of Motion No.339 of 2013 reserving liberty to the applicant to take out appropriate proceedings before appropriate forum. Grant of liberty shall not be construed as an expression on merits of the case. If such proceedings are taken out, the same shall be decided on the basis of material on record and in accordance with law and uninfluenced by

observations made in this order. Rule is made absolute in the aforesaid terms with no order as to costs. Order accordingly.

10. In view of the disposal of the C.R.A., Civil Application No.547 of 2014 for stay of the order dated 09.07.2014 and for investigation in the episode of the respondents No.1, 6 and 7 does not survive and the same is disposed of accordingly. Civil Application No.548 of 2013 for adding Advocate for the plaintiff and the concerned Judge also does not survive and the same is disposed of accordingly. Liberty is reserved to the plaintiff to apply for expeditious disposal of the Suit.

(R. G. KETKAR, J.)

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