

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CIVIL REVISION APPLICATION NO.16 OF 2015

SHRI SAMPAT S/O VISHWANATH MESHRAM

V/S

SHRI BALA S/O MAHADEO GEDAM

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

**Shri Prashant Thakre, counsel for the applicant.
Shri Bangadkar, counsel for the respondent.**

**CORAM : A.P. BHANGALE, J.
DATE : JUNE 9, 2015.**

Heard.

The revisional applicant (original plaintiff) in the trial Court in RCS No.38 of 2006 decided by the learned Civil Judge Junior Division, Kuhi on 20.10.2014 is aggrieved by the decision of the learned District Judge-11, Nagpur dated 17.1.2015 in MCA No.315 of 2014 whereby the learned District Judge-11, Nagpur remanded the controversy back to the trial Court with a direction to the trial Court to decide the suit on merits on the basis of the evidence led by the parties before it.

It appears that on judgment in the trial

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Court granting specific relief in respect of alleged contract was *ex parte* without giving full opportunity to the defendant. The efforts were made to get the *ex parte* decree set aside in the trial court and the trial court had rejected the application for setting aside *ex parte* judgment. The aggrieved defendant approached the learned District Judge-11, Nagpur in MCA No.315 of 2014 against the orders passed by the trial court refusing to set aside *ex parte* judgment. The learned District Judge considered the nature of controversy and decided the question in favour of the original defendant holding that the defendant was prevented by sufficient cause from appearing in RCS No.38 of 2006 and in the facts and circumstances of the case, the learned District Judge observed thus :

“It is always in the interest of justice that the matter is to be decided on merits by affording opportunities to the parties. There should not be hyper technical and pendentic approach in dealing such application. No prejudice would be caused to the defendant if the matter is decided on merits.”

Observing as above, the costs was awarded in the sum

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of Rs.2,500/- to the original plaintiff and *ex parte* judgment and decree passed in RCS No.38 of 2006 was set aside and the learned trial Judge was directed to decide RCS No.38 of 2006 as early as possible on or before 31.12.2015. It appears that the learned District Judge in other words insisted upon the decision of the suit on merits by affording opportunities to the parties observing that no prejudice would be caused if the suit is decided on merits. In such cases where the question arises for grant of refusal of specific performance, rival parties are required to lead evidence on merits and then the court is called upon to give a reasoned judgment meeting all the points in controversy between the parties. The disposal of such suit contemplated decision on merits instead of granting judgment for the sake of default of the party in appearing before the court against such party. The approach of the learned District Judge to award costs to the aggrieved plaintiff and to insist upon evidence for the decision on the suit on merits, *prima faice* appears legal and proper.

The learned counsel for the appellant made a reference in the case of Hemant Ganeshprasad Jaiswal ..vs.. Murlidhar Govind Khade, reported at 2013(1) Mh.L.J. 71 in order to argue that setting aside *ex parte* decree when for about 7 adjourned dates prior to passing of the decree nobody had appeared for the defendant. The defendant had filed his written statement and was represented by Advocate and Advocate in that case had failed to inform the court about no instructions received from the defendant. In that case, the defendant had made a statement in examination-in-chief and cross-examination without adducing documentary evidence for his inability to participate in suit.

Thus, in the facts and circumstances of the case, where there is suppression and misrepresentation of the facts by the defendant, the learned Single Judge refused to exercise writ jurisdiction in the facts and circumstances of that case for setting aside the order passed by the learned 5th Joint Civil Judge Senior Division, Nashik maintaining

the decree passed by the trial Court. The ruling which was rendered in the Writ Petition No.3773 of 2012 by the learned Single Judge of this Court would not attract in the facts and circumstances of the case particularly when the ex parte judgment was granted for specific performance of the contract without giving sufficient opportunities to the defendant. Learned District Judge by impugned order dealt with the controversy as it should have been dealt with for insisting upon evidence for the judgment on merits in such cases no serious prejudice would be caused to the plaintiff if the suit is decided on merits expeditiously by the end of this year 2015 by giving full opportunity to the parties to lead evidence as they may choose to adduce for final decision in the suit. Therefore, I do not consider it proper to exercise revisional jurisdiction in respect of the impugned judgment and order passed by the learned District Judge particularly considering Section 115 of the Code of Civil Procedure that the High Court has limited powers to entertain the civil revision

application for reasons if subordinate court appears to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or appears to have acted in the exercise of its jurisdiction illegally or with material irregularity.

In the present case, however, it appears that the learned District Judge has properly exercised jurisdiction vested in it to insist upon the evidence for decision in the suit on merits according to law while compensating the plaintiff in the form of costs in sum of Rs.2,500/- for adjournments sought by the defendant in the suit. Therefore, in my opinion, since no exceptional ground is made out to exercise revisional jurisdiction, the civil revision application is rejected. There shall be no order as to costs.

JUDGE

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