

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3735/2015

Jagdish s/o Meghjibhai Seth
...Versus...
Prashant s/o Laxminarayan Jaiswal

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

Court's or Judge's orders

Shri N.R. Tekade, Advocate for petitioner
Shri A.M. Ghare, Advocate for respondent

CORAM : Z.A. HAQ, J.
DATE : 03.08.2015

1. Heard Shri N.R. Tekade, the learned Advocate for the petitioner and Shri A.M. Ghare, the learned Advocate for the respondent.
2. The petition is filed by the original defendant challenging the order passed by the trial Court rejecting the application (Exh.29) filed by the petitioner under Section 10 of the Code of Civil Procedure praying that Special Civil Suit No.105/2013 (Old Regular Civil Suit No.463/2011) pending before the same Court be stayed till the disposal of the Small Cause Civil Suit No.9/2013.
3. Shri N.R. Tekade, the learned Advocate for the petitioner submits that the necessary requirements of Section 10 of the Code of Civil Procedure exist inasmuch as Special Civil Suit No.105/2013 is filed by the present petitioner against the predecessor-in-title of the respondent. Both the civil suits are in

respect of the same property and therefore, the issues are also common. However, on the enquiry made by the Court, the learned Advocates submitted that the issues are yet to be framed in Special Civil Suit No.105/2013.

4. In this view of the matter, I am of the view that the learned trial Judge should have decided application (Exh.29) after the issues are framed in Special Civil Suit No.105/2013 as it would help for proper disposal of the application.

Hence, the following order :

ORDER

(i) The impugned order is set aside. The learned trial Judge shall decide the application (Exh.29) after the issues are framed in Special Civil Suit No.105/2013.

(ii) It is submitted that both the civil suits are pending before the same Court. The learned trial Judge shall frame the issues in Special Civil Suit No.105/2013 and decide the application (Exh.29) within two months.

The writ petition is allowed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

Wadkar