

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2091 OF 2013

Amit Abhaykumar Mutha,
Age-30 years, Occu-Business,
R/o Shivaji Road, Shrirampur,
Tq. Shrirampur, Dist.Ahmednagar

PETITIONER

VERSUS

1. Zawar Tractors,
Proprietor Ramnarayan Raghunath Zawar,
Deceased, through LR's

1A. Vithal S/o Ramnarayan Zawar,
Age-53 years, Occu-Business,

1B. Sameer S/o Ajitkumar Zawar,
Age-30 years, Occu-Business,

1C. Gopal S/o Ajitkumar Zawar,
Age-33 years, Occu-Business,

1D. Gauri d/o Ajitkumar Zawar,
Age-26 years, Occu-Education,

1E. Damayanti w/o Ajitkumar Zawar,
Age-58 years, Occu-Household,
All R/o Geeta Bhavan, Shivaji Road,
Shrirampur, Dist.Ahmednagar,

2. Praveen S/o Kanayalal Boob,
Age-40 years, Occu-Business,

3. Shirish S/o Kanayalal Boob,
Age-38 years, Occu-Business,
Both R/o C/o Quality Hardware,
Paint and Machine Tools Center,
Borawake Building, Shivaji Road,
Shrirampur, Dist. Ahmednagar

RESPONDENTS

Mr.V.S.Bedre, Advocate for the petitioner.
Mr.K.N.Lokhande, Advocate for respondent Nos. 2 and 3.
Respondent Nos. 1B and 1C - served.
Petition is dismissed against respondent Nos. 1-A, 1-D and 1-E.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/02/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. This Court, by order dated 14/03/2013, had granted interim relief to the petitioner in terms of prayer clause "C" which reads as under :-

"Pending hearing and final disposal of this Writ Petition, the further proceedings on the file of the Civil Judge Junior Division, Shrirampur in RCS No.115/2005 may kindly be stayed in the interest of justice."

3. Mr.Bedre, learned Advocate for the petitioner submits that this petition is filed for challenging the order of the Trial Court dated 05/02/2013 in RCS No.115/2005. He submits that a particular question was asked by the petitioner/plaintiff to the defendant. The question was with regard to whether the defendant Praveen Kanayalal

Boob had in his possession a shop by name Quality Hardware Center with 60 tin sheets. The question was opposed by the defendants on the ground that no reference to the said property was made in the plaint.

4. Mr.Bedre submits that the suit preferred by the petitioner is for eviction. It was in that connection that the question was put to defendant No.2 considering that he had in his possession an alternate property. The objection raised before the Trial Court was upheld by the Court vide the impugned order dated 05/02/2013.

5. He, therefore, submits that no loss or harm would have been caused to the defendant if the said question was allowed and defendant No.2 offered his reply since the defendants could address the Court at the final stage as to whether the said question and the answer was relevant for deciding the case or not. He submits that if eventually at the final stage, the Trial Court comes to a conclusion that the said question was necessary for deciding the suit, it would cause an irreparable harm to the petitioner since the question has been rejected. He relies upon Order 6 Rule 2 of The CPC in support of his contention.

6. Mr.Lokhande, learned Advocate for the respondents has strenuously supported the order of the Trial Court. He relies on Order 18 Rule 11 to contend that when the Trial Court realized that there was no reference to the Quality Hardware Center in the plaint, the question was irrelevant and hence was rightly rejected. Such an interlocutory order should not be interfered with by this Court. Mr.Lokhande further submits that this petition be dismissed with costs especially in the light of the fact that the suit has been stayed at the behest of the petitioner.

7. I have considered the submissions of the learned Advocates.

8. The suit has been preferred for eviction. The petitioner has pleaded in the plaint that the defendants have an alternate property available for conducting their business. Merely because the name of the shop "Quality Hardware Center" was not mentioned in the plaint, would not mean that the petitioner is precluded from pointing out a particular property, the existence of which has been pleaded in the plaint.

9. I am of the view that the litigating sides can address the Trial Court at the final stage with regard to the said question and the

answer offered by the defendant as to whether the same would be relevant and significant for the Court while deciding the suit. By disallowing the said question, the petitioner is virtually precluded from pinpointing a property in the possession of the defendants which could be said to be an alternate property available for running its business.

10. As such, considering the rival hardships and the balance of convenience, I find that the rejection of the said question by the Trial Court deserves to be set aside.

11. The petition is, therefore, allowed. The impugned order of the Trial Court dated 05/02/2013 is set aside. The question posed by the petitioner as recorded in the order shall be posed to defendant No.2 for offering an answer.

12. Needless to state, the defendants are at liberty to address the mind of the Trial Court at the final stage in the suit while advancing oral argument with regard to their contention that the said question and the answer is irrelevant and deserves to be discarded. The Trial Court shall consider the same on its own merits and shall decide the suit without being influenced by its observations in the order dated

05/02/2013.

13. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)