

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 3026 OF 2016

Sudhir s/o Tukaram Sathe
Age: 48 years, Occu. Business now NIL,
R/o. Krushna Nagar, Bunglow No.16,
Mokase Vasti, Near Kadambari Fase No.1,
Pipe Line Road, Savedi, Ahmednagar,
District : Ahmednagar

... PETITIONER

Versus

- 1] Nilkanth s/o Dinkar Chandgude
Age: 49 years, Occu. Agril.,
R/o Chasnali, Tq. Kopargaon,
District: Ahmednagar
- 2] The General Manager,
Indian Oil Corporation Ltd.,
Indian Oil Bhawan, B.K.C.,
Plot No. C-33, G-Block, Bandra Kurla
Sankul, Bandra East, Mumbai-51

... RESPONDENTS

.....
Mr. D. A. Bide, Advocate for petitioner
Mr. R. R. Karpe, Advocate for respondent No.1
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CORAM : SUNIL P. DESHMUKH, J.

DATE : 17th MARCH, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioner purports to have been aggrieved by an order refusing transfer of proceedings bearing Special Civil Suit No. 27 of 2015 pending in the court of Civil Judge, Senior Division, Kopargaon for recovery of arrears of rent and for cancellation of transaction, to court at Ahmednagar.

3. Learned counsel for petitioner contends that petitioner is 100% physically handicapped and it is difficult for him to move. Primarily, his family consists of wife and three children. Children are taking education in Ahmednagar. Petitioner is residing along with wife at Ahmednagar and has no other income save and except meager pension he receives as ex-serviceman. He submits that under a scheme, a petrol pump had been allotted to the petitioner in Kopargaon taluka. With respect to the same, he had entered into a transaction with the present respondents, however it culminated into certain legal proceedings.

4. Having regard to aforesaid, particularly to that petitioner is not in a position to attend the proceedings at Kopargaon, he had moved Civil Miscellaneous Application No. 206 of 2015 before the Principal District Judge, Ahmednagar for transfer of Special Civil Suit No. 27 of 2015 from Kopargaon to Ahmednagar court. Said application has been rejected and as such, he is before this court.

5. Learned counsel submits that, the court had been in error in not taking into relevant aspects, particularly that the petitioner is 100% disabled and there are certain other hurdles in the way of the petitioner and thus causing inconvenience for him to attend the proceedings at Kopargaon. He therefore urges that the impugned order be set aside and his application be granted.

6. Mr. Karpe, learned counsel appearing for other side, however refers to that various legal proceedings had been pending between the parties. The proceedings at Pune have been attended to by the petitioner, so also two proceedings at Aurangabad. He therefore submits that petitioner cannot be said to have been absolutely disabled or prevented by the circumstances which have been stated. Under the circumstances, he submits that application has been moved to delay the proceedings and to avoid the decision in favour of the plaintiff in the suit at Kopargaon. He further points out that the court has taken into account relevant aspects in the matter that it is not necessary for the petitioner to visit Kopargaon and that his evidence can be brought on record by appointing court commissioner. He submits that the court while passing order has taken into account various aspects in its discretion and as such impugned order does not deserve to be interfered with under the discretionary powers of this court.

7. Perusal of impugned order shows that the court has considered the submissions on either side and had also referred to various aspects and judgments particularly in *Jitendra Sing vs. Bhanu Kumari and others* reported in 2009(3) *Mh.L.J.*, 77 referring to probable grounds for transfer of proceedings. The court in the present situation has considered that having regard to the ante-mortem stage and that difficulties which have been put forth can be taken care of in the way suggested under the impugned order. Thus the court has refused exercise of discretion in favour of the petitioner.

8. Having regard to aforesaid and that the situation can be taken care of in the manner suggested by the court and having regard to ante-mortem stage, I do not think it would be a case to give indulgence to the petitioner.

9. Writ petition, as such, is being not entertained and stands dismissed. Rule discharged.

10. At this stage, learned counsel for the petitioner earnestly requests that his client may be posed with threats and entertains reasonable apprehension that he may not be able to conduct the proceedings at Kopargaon independently, and having regard to the same, he seeks liberty to make application to the District Court at

Ahmednagar for transfer of the proceedings. If the petitioner is so advised he may make such application and the same can be dealt with by the court in accordance with facts and law and on its own merits.

(SUNIL P. DESHMUKH, J.)

sms