

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7562 OF 2013

YASHWANT SHIVAJI TAHASILDAR
VERSUS
SARLABAI BHASKAR TAHASILDAR AND OTHERS

...
Advocate for Petitioner : Shri Kulkarni Mukul S.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: January 14, 2016

...

PER COURT :-

1. This Court (Coram : Shri S.V.Gangapurwala, J.), while granting ad-interim protection has observed in the order dated 24.9.2013 as follows:-

"1. Heard.

2. Learned counsel submits that the Court below has relied on Order 41 Rule 27 of the C.P.C. while allowing the application. An application U/o 41 Rule 27 has to be considered along with the Appeal. Learned counsel relies on the judgment of the Apex Court in a case of "Malayalam Plantations Ltd. Vs. State of Kerala" reported in 2011 AIR SCW 264 and another judgment of the Apex Court in the case of "Union of India Vs. Ibrahim Uddin and another" reported in 2013 AIR SCW 2752.

3. Issue notice to the Respondents, returnable on 15.10.2013.

4. Till then, ad-interim stay to further hearing of appeal."

2. On 6.1.2016, this Court had passed the following order:-

“1. Shri Mane, learned Advocates appearing on behalf of the respondents in place of Advocate Shri Tikle, who has joined Judicial Service. He seeks time to go through the judgment of the Apex Court in the case of Malyalam Plantations Limited Versus State of Kerala [(2010) 13 SCC 487 = 2011 AIR SCW 264] and Union of India Vs. Ibrahim Uddin and another [2013 AIR SCW 2752].

2. At his request, S.O. to 12.1.2016.

3. Matter to appear in the supplementary board.”

3. On 12.1.2016, none appeared for the respondent. The matter was adjourned only to ensure that the respondent would assist this Court in deciding the petition.

4. None appears for the respondent, even today.

5. It is not in dispute that the respondent - appellant before the appeal court had filed an application below Exhibit 14 in Misc. Civil Appeal No. 56 of 2012. Order 41 Rule 27 of the CPC was invoked by the respondent - appellant. By the impugned order dated 7.3.2013, the application Exhibit 14 was allowed, despite the fact that the appeal was pending. It is also not in dispute that Regular Civil Suit No. 60 of 2012 is pending adjudication.

6. Considering the observations of this Court in paragraph No.2 of the order dated 24.9.2013, I am of the view that application Exhibit 14 should have been considered by the appeal Court along with the appeal. In so far

as the contention of the petitioner that Application Exhibit 14 can be considered by the trial Court as well, as the suit is pending, is concerned, I leave the said contention open to be considered by the appeal Court.

7. In the light of the above, this petition is allowed in view of the ratio laid down by the High Court in the case of Malyalam Plantation (supra) and Union of India (supra). The impugned order dated 7.3.2010 is quashed and set aside. Application Exhibit 14 is restored to be considered by the appeal court while deciding MCA No.56 of 2012. All contentions of the litigating sides are kept open to be considered by the appeal Court.

(RAVINDRA V. GHUGE, J.)

...

akl/d