

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

**APEAL FROM ORDER NO. 98 OF 2015**

...

SAVIRTRABAI SURESHCHANDRA KHATOD  
VERSUS  
KOKILABAI NANDLALJI CHICHANI AND OTHERS

...

Advocate for Petitioners : Mr P N Kalani  
Advocate for Respondent 18 : Mr N S Jaju h/f A S Bajaj

...

**CORAM : V.K. JADHAV, J.**

**Dated: April 16, 2016**

...

**PER COURT :-**

1. Being aggrieved by the order passed by the learned 6<sup>th</sup> Jt. Civil Judge (S.D.), Aurangabad, dated 27.8.2012 below Exh.155, the original plaintiff has preferred this appeal.

2. Brief facts, giving rise to the present appeal, are as under :-

a] The appellant-original plaintiff has instituted a suit bearing Special Civil Suit No.92 of 2008 before the Civil Judge S.D. Aurangabad, seeking a relief of partition against the members of the Joint Family. The respondent-original defendants No.18 and 20 alongwith the deceased defendant no.17 filed an application at

Exh.121 seeking permission to modernize and construction of the property bearing CTS No.18038 which is in the possession of the firm by name 'M/s Chunnilal Asaram and Company'. The learned Jt. Civil Judge S.D. Aurangabad, by order dated 17.12.2011, allowed the said application Exh.121 and thereby permitted the said defendants to carry out modernization and construction of the Petrol Pump with certain directions. Thereafter, respondent-original defendants No. 18 and 20 filed an application Exh.132 for review of the order passed below Exh.120. The said application Exh.120 was filed for seeking permission to operate the account of partnership firm in Dena Bank, Malkapur Co-operative Bank and HDFC Bank. Learned counsel submits that, the learned Civil Judge S.D., Aurangabad, by its order dated 20.1.2012, allowed the said application Exh.132 and reviewed the order passed below Exh.120 in the terms as detailed in the operative part of the order. Thereafter, the appellant-plaintiff had filed an application at Exh.136 for directing the defendants No.17, 18, 20, 24 and 35 to submit and supply the details about the existing bank accounts of

all types standing in the name of 'M/s Chunnilal Asaram and Company'. Learned Jt. Civil Judge S.D. Aurangabad, by order dated 20.1.2012 allowed the said application Exh.136 and thereby directed the defendants No. 18 and 20 to give the account numbers of all the accounts with the banks in the name of 'M/s Chunnilal Asaram and Company' on or before the next date. Thereafter, the plaintiff had filed an application Exh.155 before the trial Court to struck off the defence of defendants no.18 and 20 for non-obeying the orders of the Court as referred above. Application at Exh.155 was strongly resisted by respondents/original defendants No. 18 and 20 by filing their reply dated 27.8.2012. The learned Judge of the Trial Court, by its impugned order dated 27.8.2012 directed the defendants to comply the order dated 20.1.2012 passed below Exh.136 till next date by paying the costs of Rs.3,000/- to the plaintiff. Hence, this appeal.

3. Learned counsel for the appellant-plaintiff submits that, even though, the appellant-plaintiff has filed an application Exh.155 to struck off the defence raised by

the defendants No. 18 and 20 for non-obeying the orders of the Court passed below Exh.121, 132 and 136, the Trial court has only imposed costs and further directed the defendants to comply the order passed below Exh.136. Learned counsel submits that, the Trial Court has not considered the application Exh.155 in its proper perspective. Learned counsel submits that, it is a part of record that defendants no. 18 and 20 have not obeyed the orders passed by the Trial Court in its letter and spirit. Learned counsel submits that, even though respondents No.18 and 20 have tendered their unconditional apology before the Trial Court by filing their reply, said reply is not supported by any affidavit. Learned counsel submits that, even then, the trial Court has accepted said apology and only saddled the respondents/defendants no. 18 and 20 with costs.

4. Learned counsel for respondents-original defendants no. 18 and 20 submits that, the reply submitted by the respondents-defendants No.18 and 20 is self explanatory. Furthermore, they have tendered their unconditional apology in writing before the Court

by way of their reply. Learned counsel submits that, there is sufficient compliance of the order passed by the Trial Court as referred above. Learned counsel submits that, the Trial Court has, thus, passed the impugned order by imposing costs and on the same day, the respondents/defendants have deposited the costs before the Court below. Learned counsel submits that, there is no substance in the appeal and, the appeal is thus liable to be dismissed.

5. So far as application at Exh.121 is concerned, same is filed by the respondents/defendants no. 18 and 20 and deceased defendant No.17. That application was filed for permission to modernize and construction of the property. The Trial Court has accordingly permitted the defendants to carry out modernization and construction of the Petrol Pump with a condition that they shall every fortnight submit true and detail expenditure in respect of said modernization of construction. Order below Exh.121 came to be passed on 17.12.2011. The respondent-original defendants No.18 and 20 in their reply submitted that, though permission

for renovation is granted by the Trial Court on 17.12.2011, they were required to prepare the plan of modernization as per norms of Indian Oil Corporation and to submit the same for the approval to the said Indian Oil Corporation. It is also submitted in the reply by them that, after getting its approval, agency was required to be fixed and after fixing the agency, actual work of modernization started in the last week of May, 2012. However, they have accepted their mistake and further submitted that due to some misunderstanding the accounts remained to be submitted till today and further tendered their unconditional apology for the same. It is further brought to the notice of the Court that, expenditure of the said work will also be verified by the Engineering Department of Indian Oil Corporation and also releasing certain amount for modernization and expenses.

6. So far as the order passed below Exh.132 is concerned, it is to be noted here that this application was also filed by the original defendants no. 18 to 20 to review the order passed below Exh.120. The Trial Court

by order dated 20.1.2012 permitted them to open account with Dena Bank, Kranti Chowk Branch, Aurangabad, however, further directed them to furnish quarterly statement of the said account in the Court. In reply to this, defendants No. 18 and 20 submitted that, though, the Trial Court has permitted them to operate account, prior to the order passed by the Court, said account was already closed by the Bank and Bank has further refused to reopen the same and further directed them to obtain revised order from the Court to open new account. Learned counsel for the appellant, at this stage, submitted that, defendants No. 18 to 20 have opened the account in Malkapur Urban Cooperative Bank and have not furnished quarterly statement of the account before the Court. Learned counsel further admits that, so far as order passed below Exh.132 is concerned, there is no reference of opening of bank account in Malkapur Urban Co-operative Bank Ltd.

7. So far as compliance of the order passed below Exh.136 is concerned, there is no dispute as such and, both the counsel admits about compliance of the said

order.

8. In view of the above discussion, it appears that there is sufficient compliance of the order passed by the Trial Court below Exh.121, 132 and 136, respectively. So far as the order passed below Exh.132 is concerned, the appellant-plaintiff is at liberty to file an application for directing the defendants No.18 and 20 to furnish quarterly statement of the account opened in the Malkapur Bank.

9. In view of this, I do not find any fault in the impugned order passed by the learned 6<sup>th</sup> Jt. Civil Judge S.D., Aurangabad dated 27.8.2012 below Exh.155.

10. With the liberty as aforesaid, the appeal is accordingly disposed of. In the circumstances, there shall be no order as to costs.

**( V.K. JADHAV, J. )**

...

aaa/-