

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6586 OF 2015

Vinayak Dattatray Ghorpade	..	Petitioner
Vs.		
Samarth Education Society	..	Respondent

Mr.Sagar Kasar for the petitioner.
Mr.Vishwanath S. Talkute for the respondent no.1.
Mr.A.R.Metkari, AGP for the respondent nos.3 to 5.

CORAM : R.D. DHANUKA, J.
DATE : 20th June 2016

P.C.

. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has impugned the order dated 12th September 2013 passed by the Presiding Officer, School Tribunal, Kolhapur rejecting the application filed by the petitioner inter alia praying for withdrawal of the appeal (72 of 2011) filed by the petitioner (appellant) with liberty to file a fresh appeal.

2. Learned counsel for the petitioner submits that the petitioner had applied for liberty to withdraw the appeal filed by the petitioner in view of the objection raised by the respondent no.1 before the School Tribunal that his services have already been terminated on 25th October 2007 and thus the said appeal filed by the petitioner was not maintainable on that ground. It was contended by the respondent no.1 that the petitioner ought to have challenged the said termination of his services dated 25th October 2007 in view of the objection raised by the respondent

no.1. The petitioner applied for leave to withdraw the said appeal with liberty to file a fresh appeal thereby impugning the termination of his services dated 25th October 2007. The application filed by the petitioner was opposed by the respondent no.1.

3. Learned Presiding Officer, School Tribunal, Kolhapur in the impugned order has held that the leave to file fresh appeal could not be granted on the ground that both the proceedings were not arising out of the same cause of action.

4. Learned counsel for the petitioner submits that the services of the petitioner were terminated by the respondent no.1. Instead of opposing the appeal thereby impugning the order dated 7th October 2008 on merits, in view of the objection raised by the respondent no.1 that cause of action had arisen on 25th October 2007, the petitioner had sought liberty to withdraw the said appeal with liberty to challenge the order dated 25th October 2007.

5. Learned counsel appearing for the respondent no.1, on the other hand, submits that the impugned order passed by the learned Presiding Officer, School Tribunal, Kolhapur was correct and leave to withdraw the appeal with liberty to file a fresh appeal is rightly rejected on the ground that both the proceedings were not arising out of the same cause of action. He does not dispute that there was no cause of action for the petitioner to impugn the termination dated 7th October 2008. He submits that if this Court comes to the conclusion that the impugned order deserves to be set aside, issue of limitation be kept open.

6. In my view, the respondent no.1 thus could not have opposed the said application filed by the petitioner for liberty to withdraw the appeal with liberty to file a fresh appeal for impugning the termination dated 25th October 2007. In my view, the impugned order passed by the learned Presiding Officer, School Tribunal, Kolhapur is contrary to Rule 3 of Order XXIII of the Code of Civil Procedure. The cause of action of termination was common in both the matters and thus the School Tribunal ought to have granted leave to the petitioner to withdraw the appeal with liberty to file a fresh appeal for impugning the termination of his services dated 25th October 2007. In my view, the respondent no.1 having admitted that there was no cause of action in so far as termination dated 7th October 2008 is concerned and had opposed the said application on the ground that the petitioner could not be allowed to oppose the application for withdrawal of the appeal with liberty to file appeal to impugn the termination dated 25th October 2007. It was the case of the respondent that the services of the petitioner was terminated on 25th October 2007.

7. I therefore pass the following order :-

- (a) The impugned order dated 12th September 2013 passed by the learned Presiding Officer, School Tribunal, Kolhapur is set aside;
- (b) Application filed by the petitioner for withdrawal of the appeal (72 of 2011) with liberty to file a fresh appeal for impugning the termination dated 25th October 2007 is allowed;
- (c) It is made clear that if issue of limitation is raised by the respondent no.1 in the appeal, if any, filed by the petitioner thereby impugning

the termination dated 25th October 2007 and if the said appeal is opposed by the respondent no.1 on merits, the said issue is kept open. It is made clear that this Court has not expressed any views on merits of challenge, if any, to the termination of the services of the petitioner dated 25th October 2007;

- (d) The School Tribunal, Kolhapur shall decide the said appeal on its own merits including the plea of limitation raised if any;
- (e) Petition is allowed in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.