

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION NO.54 OF 2016

AND

CIVIL REVISION APPLICATION NO.57 OF 2016

(Shri Kamalkishor s/o Chothamalji Motoliya ..vs.. Shri Gopalkrishna Mandir Sansthan, Pandharkawda
and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 21-10-2016

Heard Shri Vivek Awchat, Advocate for the applicant and Mrs. Swati Kulkarni, Advocate for the non-applicants.

2. The applicant/defendant has challenged the order passed by the trial Court rejecting the application (Exhibit No.12) filed by the defendant under Order VII Rule 11 of the Code of Civil Procedure. The plaintiffs have filed civil suit against the defendant praying for decree for possession of suit shop and other reliefs. In the civil suit, the defendant filed the application (Exhibit No.12) contending that the plaintiff No.1-Public Trust claims to be the owner and landlord and therefore, before filing civil suit consent in writing as required by Section 50(ii) of the Maharashtra Public Trusts Act, 1950 should have been obtained and as it is not done, the civil suit is not maintainable and the plaint is liable to be

rejected.

The learned trial Judge recorded that the point raised by the defendant will be considered and determined as a preliminary issue. The learned trial Judge framed preliminary issue, proceeded with the matter and by the order dated 30-01-2016 concluded that the civil suit is not bad for want of consent in writing of the Charity Commissioner. After answering the preliminary issue against the defendant, the learned trial Judge took up the application (Exhibit No.12) for consideration and also rejected the other ground raised by the defendant that the plaintiffs have not properly valued the claim. Answering both the points against the defendant, the application (Exhibit No.12) came to be rejected.

3. One of the ground raised by the applicant/defendant before this Court by filing amendment application is that the learned trial Judge has committed an error in deciding the preliminary issue without recording evidence. The learned Advocate for the non-applicants/plaintiffs has filed an application seeking permission to place on record documents and copy of pursis dated 19-10-2015 filed by the defendant before the trial Court is placed on record. By this pursis, the defendant had informed the trial Court that he will not lead evidence on the preliminary issue. On being

confronted with the above fact, the learned Advocate for the applicant/defendant sought instructions and requested the Court that he be permitted to withdraw the civil revision application. The applicant is permitted to withdraw the civil revision application, however, the applicant shall pay costs of Rs.2,000/- (Rupees Two Thousand) to the non-applicants/plaintiffs and produce the receipt of it on the record of the trial Court, within two months.

The civil revision application is disposed as withdrawn.

Civil Application No.53 of 2016.

As the civil revision application is disposed as withdrawn, the application praying for amendment in the civil revision application has become infructuous. It is disposed accordingly.

JUDGE

adgokar