

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2940 OF 2017

Shivaji Rajaram Suralkar
Age 58 years, Occ. Business,
R/o Chhaya Pan Bhandar,
Mahatma Gandhi Road,
Navi Peth, Jalgaon.

..Petitioner

Versus

M/s Jalaram Infrastructure,
Jalgaon, a partnership firm,
through its Partners -

1. Mehulkumar Vinodkumar Trivedi,
Age 29 years, Occ. Business
R/o Old Natwar Talkies Compound,
Navi Peth, Jalgaon.

2. Vinodkumar Vaikunthrai Trivedi,
Age 50 years, Occ. Business
R/o Old Natwar Talkies Compound,
Navi Peth, Jalgaon.

3. Chandulal Vishrambhai Patel,
Age 46 years, Occ. Business
R/o Shivram Nagar, Jalgaon.

..Respondents

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Advocate for Petitioner : Shri Rane Girish S.
Advocate for Respondents 1 to 3 : Shri Patil Atmaram J.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 21, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the order dated 15.12.2017, by which, application Exhibit 57, filed under Section 10 of the Civil Procedure Code (CPC) has been rejected.

5. Section 10 of the CPC reads as under:-

" Section 10 - Stay of suit.

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.-The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

6. RCS No. 350 of 2005 was filed by the petitioner seeking injunction with reference to the suit property bearing CTS No. 2118/1/3, house No.27/79 for an area admeasuring 451 sq. meters. The injunction was sought on the basis that the defendant No.1 M/s Jalaram, who is respondent No.1 in this petition, had purchased the said property from Vinod Chandran Vallabhdas and the petitioner was operating a pan shop on the East side of the said property.

7. The above said suit was decreed and the petitioner was protected by clamping injunction that his possession should not be disturbed without following the due procedure of law. During the pendency of the said suit, respondent No.1 herein filed RCS No.131 of 2009 for seeking possession of the same suit property and for removal of encroachment, if any. The petitioner is the defendant in the said suit. Issues were cast on 13.3.2012 and at present, the stage is for the cross-examination of the defendant.

8. The petitioner preferred Exhibit 57 on 20.9.2016 on the ground that the appeal filed by respondent No.1 challenging the judgment dated 27.10.2015 in RCS No.350 of 2005 is pending and hence the suit preferred by the said defendant in 2009 will have to be stayed. By the impugned order, the trial Court has

rejected Exhibit 57.

9. It is obvious from the record available that the judgment dated 27.10.2015 on the one hand protects the petitioner against illegal dispossession and nuisance and on the other hand, permits respondent No.1 to follow the due procedure of law if the petitioner herein is to be evicted from the said suit property. As a consequence, RCS No.131 of 2009, filed by respondent No.1, is aimed at following the due procedure for seeking eviction of the petitioner.

10. As such, I do not find any possibility of a contradictory order being passed by the trial Court in the subsequent suit is filed for since the subsequent suit is filed for following the due procedure for evicting the present petitioner from the said suit premises.

11. Considering the above, this Writ Petition being devoid of merits is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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