

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4322 OF 2016

Annarao s/o Govindrao Patil
Age - 57 years, Occ - Advocacy
R/o Latur, Taluka and District - Latur

PETITIONER

VERSUS

Rukamaji s/o Bhawani Jondhale
Age - 75 years, Occ - Agriculture
R/o Dhanora (Bk), Taluka - Ahmedpur,
District - Latur

RESPONDENT

WITH
WRIT PETITION NO.4323 OF 2016

Annarao s/o Govindrao Patil
Age - 57 years, Occ - Advocacy
R/o Latur, Taluka and District - Latur

PETITIONER

VERSUS

Ramrao s/o Tukaram Kanwate
Age - 65 years, Occ - Agriculture
R/o Dhanora (Bk), Taluka - Ahmedpur,
District - Latur

RESPONDENT

.....

Mrs. P.G.Sontakke h/f Mr. G. K. Sontakke, Advocate for petitioner
Mr. N. P. Patil (Jamalpurkar), Advocate for the respondents

.....

[CORAM : SUNIL P. DESHMUKH, J.]
DATE : 7th AUGUST, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.
2. Present petitions arise from orders dated 31st March, 2016

passed on Exhibit-22 in Special Civil Suit No. 78 of 2015 and on Exhibit-23 in Special Civil Suit No.79 of 2015, the applications filed by respondents – defendants seeking vacation of *status quo* order passed by court, in respective suits.

3 Petitioner is a practising advocate. According to the petitioner he had been engaged by respondents to represent them in Land Acquisition References No. 1641 of 2001 and 1637 of 2001 and Special Darkhasts No. 32 of 2015 and 36 of 2015, respectively.

3. The suits bearing Special Civil Suits No. 78 of 2015 and 79 of 2015 by petitioner concern recovery of unpaid professional fees and expenses. In both the suits, applications Exhibit-5 had been filed seeking attachment of decretal amounts in land acquisition references No. 1641 of 2001 and 1637 of 2001 to the extent of claim of unpaid professional fees and expenses, invoking Order XXXVIII, Rule 5 of the Civil Procedure Code.

4. Applications Exhibit-22 and Exhibit-23 had been moved in respective suits by defendants seeking vacation of *status quo* order, which had restrained present respondents from withdrawing deposited amount of land acquisition compensation. Applications Exhibit-22 and 23 refer to that plaintiff is prolonging

hearing of the matters and is procrastinating giving evidence and keeping respondents away from withdrawal of payment of legitimate land acquisition compensation deposited by acquiring authority.

5. The applications – Exhibits 22 and 23 in respective suits were opposed by present petitioner - plaintiff referring to that order of *status quo* had been passed after hearing the parties and the amount involved under various heads is properly charged as shown in the claim made in the suits and the respondents - claimants have no other property to secure amounts claimed under the suits. The amounts deposited in Special Darkahsts No. 32 of 2015 and No.36 of 2015 are the only property in said amounts available with the defendants.

6. The petitioner contends that while suits for recovery of unpaid professional fees and expenses were pending, applications Exhibits-15 and 14 in the two suits had been moved by respondents raising a question of jurisdiction of court pursuant to section 9A of the Civil Procedure Code (Bombay Amendment) and *status quo* order has been passed after hearing parties concerned. Issue in pursuance of applications has been framed and is pending hearing where plaintiff has led

substantial evidence and in the circumstances, it is imperative that said question be decided first before passing order of vacating *status quo*.

7. Learned advocate for the petitioner during the course of hearing refers to orders dated 21st September, 2015 at Exhibit-E to the petitions, under which *status quo* had been directed to be maintained, further referring to that this was during pendency of applications Exhibits - 15 and 14 in respective suits whereunder framing of preliminary issue with regard to jurisdiction had been requested for at the instance of present respondents. Thus, a distinction is sought to be made in respect of order being relied on by learned advocate for the respondents in writ petition No. 9591 of 2015.

8. It is submitted that in the face of such a situation as aforesaid, it is expedient that order of *status quo*, which has been operating from a long time, which had been passed after hearing parties, to let it continue to operate till issue of jurisdiction is decided.

9. It has been referred to that while applications Exhibit-5 have been pending, orders on the same ought to have been passed allowing the same, passing an order of attachment

before judgment. Trial court had passed orders on applications Exhibits - 15 and 14 and the matters had been referred for mediation. While the petitioner had been prosecuting mediation, present respondents had avoided to appear in mediation and under the circumstances, court had passed orders directing the defendants to maintain *status quo* in respect of suit amounts. According to learned advocate, applications Exhibit-22 and Exhibit-23 could not have been entertained, for, there were no circumstances which had occurred subsequent to order of *status quo* had been passed which impelled vacation of order of *status quo* at the instance of defendants and particularly while Exhibits 15 and 14 in respective suits were being duly prosecuted.

10. Countering aforesaid submissions, Mr. N. P. Patil - Jamalpurkar appearing on behalf of the respondents submits that only an amount of Rs.15,000/- was agreed towards professional fees and there had been no agreement so far as the amounts as referred to in respect of either professional fees or amounts under other heads. There is neither any substance in the claim being made nor there is evidence produced in respect of the same. According to learned advocate, unnecessarily amounts of the respondents who are agriculturists have been detained under orders passed in suits and the respondents in the

process are getting severely affected. He submits that intention underlying the procrastination of proceedings is to vex, tire out respondents and to make them yield to unlawful demands of plaintiff. He submits that there is no justification for claiming amount of professional fees over and above Rs.15,000/-, which had been agreed upon.

11. He further refers to that there are various other litigations initiated by concerned advocate - present petitioner, making similar claims as in the present matters and in all the proceedings, applications Exhibit-5 had been rejected. He particularly refers to order passed in Special Darkhasts No. 131 of 2009 and 37 of 2015 in respect of Land Acquisition Reference No. 1625 of 2001 and contends that plaintiff, who is also petitioner in present matter, had been before this court in writ petition No. 9591 of 2015 aggrieved by order of trial court on Exhibit-5, making similar request pursuant to Order XXXVIII, Rule 5 of the Civil Procedure Code, however said writ petition has been rejected by this court. He submits that in the facts of the present case, which are almost identical, with only difference that applications Exhibit-5 therein had been rejected and here in present matters, parties had been sent for mediation by passing order on applications Exhibits-15 and 14 moved by present

respondents questioning jurisdiction of the court wherein suits have been instituted by present petitioner-plaintiff. Preliminary issue accordingly had been framed, however, its hearing had been getting procrastinated and in the circumstances, the respondents were getting hit hard for want of withdrawal of Rs.7,38,175/- and Rs.6,78,965/- in respective petitions, which form a large chunk of land acquisition compensation. Demand towards professional fees and other expenses had been excruciating and exorbitant looking at the matter from any angle and in the circumstances, since *status quo* had been operating, applications Exhibit-22 and Exhibit-23 had been moved in respective suits by the defendants.

12. He submits that while applications Exhibit-5 in other suits in similar circumstances being rejected, order impugned vacating *status quo* order can hardly be imputed any error, illegality or invalidity. He submits that decision in writ petition No. 9591 of 2015 contains elaborate discussion on the legal position involved in the matter, particularly, from paragraphs No. 18 onwards. He puts emphasis on paragraph No. 23 of said order contending that in the same, the Apex Court's judgment in the case of "*Raman Tech and Process Engineering Company V/s Solanki Trades*" reported in 2008 (3) *Mh.L.J.* 6 has been discussed and relevant extract had been

reproduced thereunder and this high court thereupon had observed under paragraph No. 24 as under:

" 24. *It, therefore, has to be borne in mind that Order 38 Rule 5 is not to be exercised mechanically and casually. It is that power which has to be exercised sparingly and so to say in the rarest of rare case where the intended object of the Defendant is prima facie visible in frustrating the claim of the Plaintiff. In the instant case, besides the admission of the Respondent that an amount of Rs.15,000/- is to be paid by way of professional fees, the details put forth by the Petitioner / Plaintiff below paragraph 11 in the suit, prima facie appear to be a mere statistical data, unsupported and unsubstantiated by any document.* "

13. Taking into account that the petitioner has made claims of amounts under various heads as are appearing in the suits, as on the date, as observed by Hon'ble learned single judge in decision in writ petition No. 9591 of 2015 that it is merely a statistical data unsupported and unsubstantiated by any document and that passing order pursuant to Order XXXVIII, Rule 5 of the Civil Procedure Code is not a mechanical and casual process and such powers have to be exercised sparingly in rarest of rare cases wherein object of the defendant *prima facie* is of frustrating claim of plaintiff. Here in the present matters, respondents do not deny that the petitioner had been engaged as their advocate, however, it has been contended that

professional fees agreed upon was only to the tune of Rs.15,000/- and not more. There had been no written agreement so far as claim under various heads in the suits.

14. Having regard to order passed by Hon'ble learned single judge of this Court in writ petition No. 9591 of 2015, wherein order on Exhibit-5, has been considered observing that the same is not capable of granting relief in the facts and circumstances of the case and in the present matter, situation being more closely similar except difference in amounts claimed, it would be appropriate to follow the suit, and pass order as in writ petition No. 9591 of 2015.

15. In the circumstances, writ petition fails and the same stands dismissed. Rule stands discharged. Interim relief hitherto operating stands vacated.

16. Learned advocate for the petitioner at this juncture makes a request for expeditious disposal of *lis* pending between the parties. Having regard to nature of *lis*, it would be expedient that the trial court proceeds with and dispose of the same as expeditiously as possible.

[SUNIL P. DESHMUKH, J.]