

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

MISCELLANEOUS CIVIL APPLICATION NO. 237 OF 2017

SURESH GOVINDRAO KUNDE
VERSUS
GOVINDRAO RAMCHANDRA KUNDE AND OTHERS

...
Advocate for the Applicant : Shri Sagade B.G.
Advocate for the Respondents : Shri PP.Dawalkar.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th December, 2017

Per Court:

1 By this application, the Applicant has put forth prayer clauses C and D as under:-

- "C) *The Hon'ble Court may please transfer RCS No.38/2012 pending before 3rd Jt.C.J.J.D. Vaijapur to any other Court at Vaijapur.*
- D) *The impugned order dated 16.11.2017 passed by learned Principal District Judge Aurangabad in MARJI No.307/2017 may kindly be quashed and set aside."*

2 The contention of the Applicant is that the application Exhibit-490 was filed by the Defendants in Regular Civil Suit No.38/2012 praying for leave to collect the standing crop in the suit field and sell the said crop. This application was filed in the backdrop of the Court Receiver having been appointed by the Trial Court, who was entrusted with the

duty of keeping the possession of the suit properties, maintain the accounts of income and expenditure of each property separately and submit the statement of income and expenditure at quarterly intervals before the Trial Court.

3 It is strenuously submitted that the application Exhibit-490 was decided by the Trial Court without the Applicant/ original Plaintiff and the Court Receiver, receiving the copy of the said application. They had no idea that Exhibit-490 was filed and was being taken up for hearing. It is, therefore, stated that the Applicant has lost trust and faith in the learned Judge of the Civil Court.

4 The learned Advocate for the Respondents has strenuously prayed that this application be dismissed with costs.

5 I find from the record that the Applicant had also filed Contempt Petition No.377/2017 against the learned Judge of the Civil Court. By order dated 11.07.2017, this Court has noted that there does not appear to be any willful or deliberate disobedience by the learned Judge. The said Contempt Petition is still pending.

6 The order dated 20.05.2017, which is the foundation of this application, is the subject matter of adjudication in Writ Petition No.6721/2017. I have gone through the said order only to assess the credibility of the Applicant's submission that the Applicant has lost faith in the learned Trial Judge because of the said order. I have noted the

submissions of the Applicant that he had no knowledge about Exhibit-490 which was filed in vacation. I find that since the said order is being adjudicated upon by a coordinate Bench of this Court as per the present assignment, it would be inappropriate to deal with the said order in this application.

7 The Applicant has also prayed that the order of the learned Principal District Judge, Aurangabad dated 16.11.2017 rejecting the Transfer Application of the Applicant be quashed and set aside.

8 I find from the impugned order that pending the Contempt Petition against the learned Trial Judge, the Applicant has prayed for transfer of the proceedings. It appears that the Applicant has resorted to a peculiar modus operandi of filing Contempt Petition No.377/2017 before this Court against the learned Trial Judge and based on the pendency of the said contempt petition, an application for seeking transfer of RCS No.38/2012 is sought.

9 I find that modus operandi followed by the Applicant is aimed at pressurizing the learned Trial Judge. When a judicial order has been passed and the said order is subject matter of Writ Petition No.6721/2017, legality and propriety of the said order would be considered by this Court. This cannot be a ground for attempting to pressurize the learned Trial Judge and seek transfer of the proceedings. I am, therefore, of the view that this application deserves to be dismissed with costs so as to ensure

that the Applicant realizes the effect of his ill motivated action.

10 This Miscellaneous Civil Application is, therefore, dismissed by imposing costs of Rs.10,000/- (Rupees Ten Thousand) on the Applicant.

11 The learned Advocate for the Respondents submits that the said amount can be donated to the Advocates Association's Bar Library, High Court, Aurangabad.

12 As such, the said amount of costs shall be deposited by the Applicant with the Advocates Association's Bar Library, High Court, Aurangabad within FOUR WEEKS from today. A copy of the receipt shall be produced before the Trial Court in RCS No.38/2012 within TWO WEEKS from the date of deposit, failing which, the suit of the Applicant shall stand dismissed.

13 Considering the sensitivity of the matter, the Registry is directed to place Contempt Petition No.377/2017 before the appropriate court on 18.12.2017.