

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14306 OF 2016

Songya Ganpat Tare ... Petitioner
Vs.
Balaram Shripat Tare and others ... Respondents

Mr. J. M. Puranik for Petitioner.
Mr. Amol P. Mhatre for Respondents No.1 to 9.
Ms Vaishali Nimbalkar, AGP for Respondents No.10 to 13.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 13, 2017

P.C. :

Heard Mr.Puranik, learned Counsel for petitioner and Mr. Mhatre, learned Counsel for respondents No.1 to 9 and Ms Nimbalkar, learned AGP for respondents No.10 to 13 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'judgment debtor No.1', has challenged the judgment and order dated 07.03.2016 passed by the learned Civil Judge, Junior Division, Bhiwandi below exhibit-146 in Regular Darkhast No.44 of 2002. By that order, the learned trial Judge rejected the application made by the judgment debtor No.1 under Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for review of the order dated 21.03.2014 passed below exhibit-99.

3. In support of this Petition, Mr. Puranik submitted that it is undisputed fact from record that copy of the application exhibit-99 was not served on judgment debtor No.1. The orders dated 14.03.2014 and 21.03.2014 below exhibit-99 were passed behind the back of the judgment debtor No.1. He has invited my attention to the application

exhibit-146 filed by the judgment debtor No.1, and in particular paragraph 8 onwards. He submitted that even the shares were not determined by the trial Court.

4. On the other hand, Mr. Mhatre supported the impugned order. He submitted that the learned trial Judge has rightly held that the arguments which are advanced in the Review Petition were already advanced before this Court and the same were considered while disposing of Writ Petition No.7338 of 2015 on 15-16th February 2016. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 8 of the application exhibit-146, reference is made to the order dated 15-16th February 2016 passed in Writ Petition No.7338 of 2015. In paragraph 9, judgment debtor No.1 contended that High Court clearly recorded a finding of fact that application exhibit-99 filed by the judgment debtors No.2 to 6/3 was not served on judgment debtor No.1. Order dated 21.03.2014 was passed behind the back of the judgment debtor No.1. It is only on these grounds, judgment debtor No.1 filed application exhibit-146 seeking review of the order dated 21.03.2014.

6. In paragraph 11 of the order dated 15-16th February, 2016 passed in Writ Petition No.7338 of 2015, the finding of the trial Court as regards determining share was dealt with. In paragraph 12, the statement of Mr. Mhatre that judgment debtor No.1 was not served with application exhibit-99 was noted. In paragraph 13, the submission of Mr. Puranik that the learned trial Judge determined the shares of only

plaintiffs as 5/27 was dealt with and it was observed that once the shares are determined by the trial Court and the said decree was confirmed by the appellate Court, it is no longer open to either of the parties to reopen the issue as to whether the shares are determined or not. It was further observed that in paragraph 18, the learned trial Judge had determined the shares. It was further observed that once the shares are determined then what remains is only to separate their shares by appropriate procedure. The application made by judgment debtor No.1 at exhibit-109 for deciding the maintainability of application, therefore was found without any merit and the learned trial Judge rightly held that application exhibit-99 made by judgment debtors No.2 to 6/3 is perfectly maintainable.

7. It was also observed that even if application exhibit-99 was not served on judgment debtor No.1, judgment debtor No.1 did not show any prejudice being caused to him.

8. In view thereof, the learned trial Judge rightly rejected the application by imposing costs of Rs.5,000/- to be given to the judgment debtors No.2 to 6/3 collectively. Mr. Puranik submitted that at least the imposition of costs may be waived. I do not find any merit in this submission. In paragraph 10, the learned trial Judge has recorded that judgment debtor No.1 is liable to be saddled with compensatory costs of Rs.5,000/- for abusing process of law. For the reasons recorded in paragraph 10 of the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)