

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2915 OF 2018

Rahul Chandrakant Kirloskar

...Petitioner

Versus

Kirloskar Brothers Ltd. & Anr.

...Respondents

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Mr.V.A.Thorat, Senior Advocate a/w. Ms. Dhauti Kapadia,
Mr. Nilesh Tated and Mr. Rupesh Parekh i/b. DSK Legal for the
Petitioner.

Mr.Janak Dwarkadas, Senior Advocate a/w. Mr. Peshwan Jehangir,
Ms. Savani Gupte, Mr. Ravishankar Krishnan, Ms. Sradha Kapadia
i/b. Khaitan & Co. for Respondent No.1.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 06, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.
3. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order

dated 4th January, 2018 passed by the learned 3rd Jt. CJJD, Vadagaon Maval, Pune below exhibit 16 in Regular Civil Suit No. 175 of 2017 thereby rejecting the application filed by defendant no. 2 under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the C.P.C”) is challenged.

4. Another order dated 30th January, 2018 passed by the learned 3rd Jt. CJJD, Vadgaon Maval, Pune refusing to grant time to file written statement is also challenged.

5. Respondent No.1, who is the original plaintiff, has filed a Regular Civil Suit No. 175 of 2017 for simplicitor mandatory injunction that defendant No.1 be directed to apply for permission from appropriate authority for purchase of the suit property and defendant No.2 be directed to convey the suit property in favour of defendant No.1 society along with access road to the suit property and also some other reliefs. The conveyance for which this mandatory injunction is sought was already executed between defendant Nos. 1 and 2 on 29th August, 2017 and the suit was filed on 8th September, 2017. Considering this factual position, the said cause of action to that extent does not survive. On that basis, the

petitioner/ defendant no.2 moved an application under Order 7 Rule 11 of the C.P.C., which was rejected by the trial Court on 4th January, 2018.

6. The learned Senior Advocate for respondent No.1 has made clear that when the suit was filed by the plaintiff, they were not aware about the said conveyance and, therefore, the relief was sought accordingly.

7. The learned Senior Advocate for the petitioner has submitted that the plaintiff's application under Order 6 Rule 17 of the C.P.C. for amendment of the plaint is pending before the trial Court. He has pointed out that the petitioner/ defendant no.2 has also filed an application under Order 7 Rule 11 of the C.P.C., which is still pending before the trial Court and he cannot be asked to file written statement during the pendency of that application. First, the trial Court should decide the application of maintainability of the suit and if at all it is decided, then only defendant no.2 should be allowed to file written statement.

8. Heard submissions. In view of the factual position, a Deed of Conveyance was executed earlier and thereafter, the suit was filed without having knowledge of this execution. Hence, I am of the view that the application which is filed under Order 6 Rule 17 of the C.P.C. regarding amendment of the plaint is required to be decided first so that the exact frame of the plaint and exact nature of the relief which the plaintiff intended to claim will be cleared to both the parties. Thereafter, the application filed under Order 7 Rule 11 of the C.P.C., which is pending before the trial Court will be decided. At this stage, I do not want to deal with the order dated 4th January, 2018 passed by the learned Judge of the trial Court, which is under challenge. However, the order on the point of maintainability was passed on 4th January, 2018 and the prayer of defendant no.2 seeking time to file written statement was rejected on 30th January, 2018. Considering this scenario and also short time frame between the filing of the suit i.e., 8th September, 2017 and the date of rejection of the application i.e., 30th January, 2018, I am of the view that the order rejecting to give time to file written statement is to be set aside and some time to be given to defendant no.2 to file written statement. Hence, I dispose of this Petition with following order :

ORDER

(i) The petitioner/ defendant no.2 is allowed to file written statement on or before 23rd July, 2018.

(ii) The application under Order 6 Rule 17 of the C.P.C filed by respondent no.1/plaintiff is to be decided as per the date-schedule of the trial Court. If the application is allowed, then the petitioner/ defendant no.2 will get an opportunity to file further written statement.

(iii) The application under Order 7 Rule 11 filed by the petitioner/ defendant no.2 will be also decided as per the date-schedule of the trial Court.

(MRIDULA BHATKAR, J.)