

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

WRIT PETITION NO. 2695 OF 2017

Abdul Raub Abdul Gafar Ansari	...	Petitioner
V/s.		
Dudhabhau Choudhary & Ors.	...	Respondents

Mr.Sachin Dhakephalkar for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner. The Respondents are, though duly served with notice, remained absent. Despite opportunity granted to them, on earlier occasion and today also, none present on behalf of the Respondents.

2] The only grievance raised by the Petitioner in this Writ Petition filed under Article 227 of the Constitution of India, challenging the order dated 1st July, 2016 passed by the District Judge-9, Thane, in Civil Miscellaneous Application No.85 of 2013 is that, the first Appellate Court has directed this Contempt Civil Miscellaneous

Application No.85 of 2013 to be decided along with the Civil Appeal No.156 of 2012. It is urged that both the proceedings are independent and hence, the Appellate Court should not have directed to decide the same simultaneously, that too only on the ground that the appeal is fixed for final hearing.

3] In support of his submission, learned counsel for the Petitioner has relied upon the judgment of this Court, in the case of, *Rampyaribai Sukhdeo Daga & Ors. V/s. Niladevi Narayanadas Jakhotiya & Ors.*, reported in [(2007) 5 AllMR 95], where-in paragraph No.7 this Court was pleased to reaffirm the legal position that the proceedings under Order 39, Rule 2A of Civil Procedure Code are absolutely independent proceedings, whether there is breach of injunction or not is a question to be decided upon evidence and the said question has no relevance with the issues in the suit which are to be decided on merits of the suit. The eventuality of breach of injunction has occurred not at the time of filing of the suit but subsequent to the filing of the suit and hence, the issues framed in the suit on merits of the suit cannot be mixed up with the trial of the application for breach of injunction. It was held that the proceedings for breach of injunction has absolutely

nothing to do with the decision of the suit on merits.

4] In view thereof, in this respect, this Court has also considered the fact that, “the proceedings under Order 39 Rule 2A of C.P.C. initiated on the ground of disobedience or breach of injunction order, is in the nature of a criminal proceeding as the person against whom such proceeding is initiated is liable to be detained in prison if it is found that he had committed breach of injunction order. Since a punishment is imposed and a person is sent to jail, the principle on which these proceedings are decided are entirely different. Here the principle of criminal law will apply. Whereas the principle on which the Civil Suit or Civil Appeal is decided are different. Here the case will have to be proved on the principle of preponderance of the probability.”

5] Thus, it needs no reiteration is that when both the proceedings; one under Order 39 Rule 2A of C.P.C. for breach of injunction order and another Regular Appeal, challenging the judgment and order of the trial Court are different one. Their consequences are also different. The procedure laid down for deciding the same is also different. Therefore, it was not proper on the part of the first Appellate

Court to direct that the Contempt Application bearing Misc. Civil Application No. 85 of 2013 and Civil Appeal No. 156 of 2012 be decided together. The impugned order, therefore, passed by the Appellate Court, being not sustainable in law, is required to be quashed and set-aside.

6] The Writ Petition is accordingly allowed. The impugned order passed by the trial Court is quashed and set-aside in view of the order passed by this Court on 17th April, 2014, the Appellate Court is directed to decide the Misc. Civil Application No. 85 of 2013 as expeditiously as possible.

[DR.SHALINI PHANSALKAR-JOSHI, J.]