

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.468/2017

Satyanarayan s/o Balkisan Agrawal V/s Preshit s/o Kishor Rao Deshmukh

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.S. Deshpande, Advocate for Appellant.
Shri P.S. Patil, Advocate for Respondent.

CORAM: A.S. CHANDURKAR, J.

DATE: 26-06-2018

The learned Counsel for the parties have been heard
on the following substantial question of law:

*“When it is the case of the plaintiff that the defendant
was carrying on business under the name and style of
M/s Agrawal Constructions, whether the suit filed
against the defendant in his individual name answers
the requirement of provisions of Order XXX Rule 10 of
the Code of Civil Procedure, 1908”?*

The appellant is the original defendant in the suit
filed by the respondent for recovery of an amount of
Rs. 6,15,000/-. According to the plaintiff an amount of
Rs. 5,25,000/- was deposited with the defendant and the
defendant agreed to pay interest at the rate of Rs. 1.25 % per
month. The defendant failed to pay those amounts and the
cheques given to the plaintiff in that regard were not honoured.
The plaintiff therefore filed suit for recovery of the aforesaid
amounts. The defendant failed to file his written statement
despite grant of opportunity by the trial Court. The trial Court

after considering the evidence on record decreed the suit. The appellate Court confirmed that judgment.

It is submitted by the learned Counsel for the appellant that the suit was filed in the name of the proprietor of M/s Agrawal Construction and the same was not maintainable. According to him the transaction was in the name of “M/s Agrawal Construction” and not in the name of defendant. The learned Counsel referred to the provisions of Order-XXX Rule-10 of the Code of Civil Procedure, 1908. He then submitted that absence of opportunity to defend the suit before the trial Court has caused prejudice and therefore such opportunity ought to be granted to the defendant.

The learned Counsel for the respondent submitted that the defendant was the sole proprietor of the firm and the suit as filed was maintainable. The learned Counsel for the respondent placing reliance in the case of ***Municipal Council Tiroda V/s K.Ravindra and Company reported in 2003 (2) Mh.L.J. 987*** submitted that filing of the suit in the name of the sole proprietor was legal. Similarly, the defendant failed to make use of the opportunities granted for filing the written statement.

I have heard the learned Counsel for the parties at length and I have perused the impugned judgment. It is not in dispute that the defendant was the sole proprietor of M/s Agrawal Construction. He was sued in the trade name of his firm. This aspect is considered in the judgment of learned Single Judge in ***Municipal Council Tiroda (supra)*** and such cause has been held to be permissible. No prejudice has been pointed out on the ground that the defendant was sued in the trade name.

Perusal of judgment of the trial Court as well as the appellate Court indicates that sufficient opportunity was given to the defendant to file his written statement. The costs imposed by

the trial Court while granting such opportunity were also not paid and therefore the matter proceeded ex-parte. No fault can be found with impugned judgment considering the conduct of the defendant.

In view of aforesaid, there is no case is made out to interfere at the instance of the defendant. Hence the Second Appeal stands **dismissed** with no order as to costs.

The Respondent is at liberty to withdraw the amount of Rs. 2,00,000/- deposited by the appellant alongwith accrued interest. This withdrawal shall be adjusted and treated as part of the decretal amount.

JUDGE