

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

WRIT PETITION NO.13770 OF 2019

MILIND ARVIND SEWALIKAR
VERSUS
M/S MICROBAX INDIA LTD

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Advocate for the Petitioner : Shri Kalani Pravin N.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th November, 2019

Per Court:

1 The petitioner/ original defendant in Special Civil Suit No.309/2008 is aggrieved by the order dated 24.04.2019 passed by the Trial Court by which, the application exhibit 45 seeking stay to the said suit under Section 10 of the Code of Civil Procedure in view of the earlier suit bearing RCS No.1/2008 having been decided, has been rejected.

2 The petitioner contended that the parties to the first suit (RCS No.1/2008) are the same as are the parties in the present suit (Special Civil Suit No.309/2008). It is then contended that the first suit was with regard to the trademark and whether, the plaintiff was entitled to rendition of accounts. The second suit was purely for rendition of accounts.

3 The learned advocate for the petitioner has strenuously

criticized the impugned order. He has canvassed each of the 17 grounds formulated in the memo of the petition. He submits that contradictory views are likely in the pending suit in comparison to the earlier suit that was decided. He also points out that RCS No.1/2008 was finally decided by the judgment of the Trial Court on 23.10.2015. First Appeal No.365/2016 is preferred by the petitioner in this Court. This Court has stayed the decree only to the extent of clause (3) which reads as under :-

"3. *The defendants are ordered and directed to render the accounts in respect of manufacturing/ producing and sale of bio and organic fertilizers, enriched organic manure, organic manure etc., either with brand name "Biomax".*"

4 I have gone through the petition paper book in view of the submissions of the learned advocate for the petitioner. In the first suit, the same plaintiff had arrayed the present petitioner in his capacity of being the partner of M/s Alliance Biotech. He was the partner along with the plaintiff in the said partnership firm. Defendant no.2 in the first suit is M/s Alchemy Processors Private Limited, which is a different company and the present petitioner is one of the directors of the said company. In the first suit, the plaintiff had sought a direction for restraining the defendants from manufacturing or selling organic manure, bio fertilizer, organic fertilizer and enriched organic manure, etc. in the State of Maharashtra. A further prayer was made with regard to rendition of accounts in respect of manufacturing or producing and selling of bio and organic fertilizer

enriched organic manure, organic manure, etc., either with brand name "Biomax" or otherwise. As such, the rendition of accounts was in connection with the company M/s Alchemy Processors Private Limited.

5 In the present Special Civil Suit No.309/2008, the plaintiff has sought rendition of accounts from the present petitioner in connection with the partnership firm M/s Alliance Biotech in which, the plaintiff is a partner. This suit for rendition of accounts has nothing to do with the rendition of accounts sought by the same plaintiff in relation to M/s Alchemy Processors Private Limited, which was an independent company floated by the petitioner.

6 In view of the above, I do not find that there is any overlapping issue in the pending suit vis-a-vis the first suit as the cause of action in the present suit is completely different in relation to the cause of action in the first suit against M/s Alchemy Processors Private Limited.

7 Considering the above, this Writ Petition being devoid of merit is, therefore, dismissed.