

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5335 OF 2014

WITH

WRIT PETITION NO. 6304 OF 2014

Rajendra M. Developers and Builders

Pvt. Ltd. and anr.

.. Petitioners

vs.

Shivdas N. Thankar and ors.

.. Respondents

Mr. Pradeep J. Thorat for the Petitioners

Mr. Rahul D. Motkari for Respondent No.1.

Mr. S.M. Gorwadkar, Sr. Advocate for Respondent Nos.2 to 6.

CORAM : M. S. SONAK, J.

DATE : 05 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. Thorat for the petitioners, Mr. Rahul Motkari for respondent No.1 and Mr. S.M.Gorwadkar, learned senior counsel for respondent Nos.2 to 6.

2] Learned counsel for the parties agree that both these petitions can be disposed of by common judgment and order.

3] Accordingly, Rule in both these petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

4] The challenge in Writ Petition No. 5335 of 2014 is to the order dated 29th March 2014 by which the learned Trial Judge dismissed the petitioners' application at Exhibit-178 seeking for consolidation of Special Civil Suit Nos.366 of 2008 and 553 of 2012.

5] During pendency of this petition, learned Trial Judge, by orders dated 9th June 2014 rejected the petitioners' application for seeking adjournment and further closed the evidence of the petitioners. Accordingly, the petitioners instituted Writ Petition No. 5335 of 2014.

6] In the present case, Special Civil Suit No. 366 of 2008 came to be instituted by respondent No.1 herein against respondent Nos.2 to 6 seeking specific performance of agreement in relation to the suit property. Similarly, the petitioners herein have also instituted Special Civil Suit No.553 of 2012 against respondent Nos.2 to 6 or in any case, in relation to the very same suit property. This means that both the petitioners as well as respondent No.1 seeks specific performance in relation to one and the same suit

property. In such a situation, the interests of justice will be served, if both the suits are consolidated and are directed to be proceeded together. This will in fact obviate the possibility of contradictory decrees and possibly, the parties can even agree to lead common evidence. In these circumstances, there was no good reason to reject the petitioners' application at Exhibit 178. The impugned order dated 29th March 2014 is therefore, liable to be set aside and is hereby set aside. The petitioners' application at Exhibit-178 is accordingly allowed.

7] Since Writ Petition No. 5335 of 2014 is allowed, the interests of justice also required that Writ Petition No.6304 of 2014 is also allowed. It is on account of pendency of Writ Petition No. 5335 of 2014 that the petitioners had applied for an adjournment in Special Civil Suit No. 366 of 2008. Though, the learned Trial Judge is correct in observing that there was no stay from this Court, now that Writ Petition No. 5335 of 2014 is allowed, the petitioners are entitled to have an opportunity to lead evidence in the suit. Accordingly, the impugned order in Writ Petition No.6304 of 2014 is also set aside and the petitioners are directed to be granted

opportunity for leading evidence in Special Civil Suit No. 366 of 2008.

8] Rule is accordingly made absolute in both these petitions in the aforesaid terms. There shall be no order as to costs.

9] The interim orders granted earlier in relation to both the aforesaid suits are hereby vacated. The parties are directed to appear before the learned Trial Judge on 22nd April 2019 at 11.00 a.m. and to file an authenticated copy of this order.

10] Further, learned Trial Judge is directed to dispose of both the suits, now that they are consolidated, as expeditiously as possible. Mr. Motkari, learned counsel for respondent No.1 points out that there is already an order of expedition in Special Civil Suit No. 366 of 2008.

11] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)