

FARAD CONTINUATION SHEET No.  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH AT NAGPUR

**WRIT PETITION NO. 3991/2016**

(NAVALKISHORE GOKULCHAND MURARKA **VERSUS** M/S GANESHDAS BHIVRAJ FIRM,  
CONSTITUTE OF THE MEMBER, UNITED JOINT HINDU FAMILY THROUGH KESHARDEO RADHAKISAN  
URARKA (DEAD) THR. VIKAS SOMPRAKASH MURARKA & OTHERS)

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri P.D. Goenka, counsel for petitioner.  
Shri M.G. Sarda, counsel for R-1(i) & (ii).  
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**CORAM : A.S. CHANDURKAR, J.**

**DATE : AUGUST 02, 2019.**

Considering the short issue involved, the learned counsel for the parties are heard.

The order passed by the trial Court below Exhibit 299 thereby rejecting the application filed by the petitioner under the provisions of Order I Rule 10 of the Code of Civil Procedure, 1908 is under challenge.

The suit as filed is for permanent injunction wherein relief has been sought seeking to restrain the defendants from going ahead with any construction on the suit property. Transfer of the property in favour of some of the defendants is also sought to be challenged. In that suit, the petitioner moved an application at Exhibit 299 in which it was stated that the petitioner was a member of the joint family and he had an undivided share in the suit property. There was an apprehension that the plaintiff-Firm was likely to compromise the suit with some of the defendants and hence the petitioner sought his impleadment as a plaintiff in the suit. This application was opposed by the original plaintiff. The trial Court by the impugned order has rejected the said application.

Shri P.D. Goenka, learned counsel for the petitioner submits that the impugned order has been passed without hearing the petitioner. Since the proceedings in the suit were stayed for a considerable period and the counsel engaged used to come from a different place, he could not remain present when the application was heard. Considering the nature of relief sought in the said application, it was necessary to consider relevant documents which the petitioner intended to file on record after the reply was filed by the plaintiff. Since that opportunity was not availed of, it is prayed that the application may be directed to be reconsidered as said documents would be required to be referred to for the first time before this Court.

Shri M.G. Sarda, learned counsel for the respondent no.1 opposed aforesaid submissions. He submitted that the applicant was negligent in prosecuting the application filed under Exhibit 299. As the counsel himself was absent, the Court had no option but to proceed with the consideration of the said application. He submitted that the application was rightly rejected by the trial Court.

On hearing the learned counsel for the parties and on perusing the documents on record, it is seen that the petitioner has specifically pleaded that the order dated 26.11.2015 was passed in his absence as his counsel was not present when the application was heard and decided. It is further seen that though the plaintiff filed his reply and some documents at Exhibits 320 and 326, the said documents were not supplied to the applicant. It is a fact that the counsel was not present on a few dates when the application was to be heard. However, considering the fact that the prayer made in the application is for being impleaded as plaintiff, it is found necessary that the trial Court should reconsider the said application in accordance with law.

Hence for aforesaid reasons, the order dated 26.11.2015 is set aside. The application at Exhibit 299 is directed to be decided afresh on its own merits and in accordance with law. The trial Court shall not be influenced by any observation made in this order. All the contentions of the respective parties are kept open.

The Writ Petition is disposed of in aforesaid terms. No costs.

**JUDGE**

APTE