

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

CIVIL REVISION APPLICATION NO.85 OF 2017

(SK. BHIKA SK. CHHOTU REGHIWALE...VS.. SAYEEDA JABIN ISMAILKHAN.)

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

Court's or Judge's orders

Shri V.B.Bhise, Advocate for applicant.

Shri A.S.Thotange, Adv. H/f. Shri U.J.Deshpande, Adv. for non-applicant.

CORAM : Z.A.HAQ, J.

DATED : AUGUST 27, 2019.

Heard.

The civil suit filed by the respondent praying for decree for specific performance of agreement to sell was dismissed in default on 4th January 2013. On the same day i.e. on 4th January 2013, the application under Order IX Rule 9 of the Code of Civil Procedure was filed on behalf of the plaintiff. However, it was rejected as the application was not supported by the affidavit of the plaintiff. The plaintiff had filed another application under Order IX Rule 9 of the Code of Civil Procedure on 1st February 2014. This application is allowed by the impugned order.

According to the petitioner/defendant, the second application filed on behalf of the plaintiff under Order IX Rule 9 of the Code of Civil Procedure was not maintainable and the only course available to the respondent/plaintiff was to file appeal under Order 43 Rule 1(c) of the Code of Civil Procedure to challenge the order dated 4th January 2013. Another submission is that the reason recorded by the learned trial Judge that the civil suit is required to be restored as huge amount of parties is involved is also unsustainable in law.

As far as the first submission is concerned, it cannot be accepted. The learned trial Judge has rightly rejected this contention recording that the first application filed on behalf of the plaintiff under Order IX Rule 9 of the Code of Civil Procedure was rejected on technical ground that it was not supported by the affidavit of the plaintiff. The second application on which the impugned order is passed came to be filed within the prescribed period of limitation. I find that the learned trial Judge has properly considered this aspect.

As far as other contention of the petitioner is concerned, though I find some substance in it, and only because huge amount of parties is at stake in the litigation it cannot be a ground for exercising jurisdiction under Order IX Rule 9 of the Code of Civil Procedure. However, considering the facts of the case, I find that the trial Court has otherwise not committed any illegality or error of jurisdiction by restoring the civil suit and affording the parties an opportunity to contest the matter on merits. As I find that the learned trial Judge has judiciously exercised discretion vested in him under order IX Rule 9 of the Code of Civil Procedure, I see no reason to interfere with the impugned order.

Hence, the Civil Revision Application is **dismissed**.
In the circumstances, the parties to bear their own costs.

JUDGE