

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

WRIT PETITION NO. 4822 OF 2019

Shri Ravindra Sudhakar Pimparkar

..VS..

Sheikh Umar Sheikh Dadamia

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

Court's or Judge's orders

Ms. Padma M. Chandekar, Adv. For petitioner

CORAM : Z.A.HAQ, J.

DATED : 19th July, 2019

Heard.

By the impugned order, the trial Court has permitted the respondent/plaintiff to withdraw the civil suit and has granted permission to file fresh civil suit. Being aggrieved by grant of permission to file fresh suit, the defendant has filed this petition.

The learned Advocate for the petitioner has pointed out that the order granting permission to the respondent/plaintiff to file fresh civil suit is on the erroneous consideration that though the defendant had opposed the application filed by the plaintiff seeking permission to withdraw the civil suit and file fresh civil suit, the defendant had alternatively prayed for costs. The submission on behalf of the petitioner/defendant is that the defendant had not made any alternate prayer and had opposed the application filed by the plaintiff. The submission made on behalf of the petitioner/defendant appears to be correct.

But, on examining the facts of the case, and the considerations in paragraph no. 6 of the impugned order, I find that the learned trial Judge has properly exercised the jurisdiction vested in him by Order XXIII Rule 3 of the Code of Civil Procedure.

The learned trial Judge has recorded that because of the technical mistake in the pleadings and as some parties were not impleaded there was chance of dismissal of the civil suit, and therefore grant of permission to file fresh civil suit cannot be faulted with. I see no reasons to interfere with the impugned order.

Writ Petition is dismissed. No costs.

JUDGE

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