

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.402 OF 2019

Ayyub Kha Sadru Kha and ors.

-vs-

Sardar Sadru Kha and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. B. Mirza, Advocate for petitioners.

Shri J. K. Matale, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.

DATE : April 16, 2019

The respondent No.1 is duly served with the notice issued earlier. The learned counsel for the petitioners as well as respondent No.2 are heard.

2. The petitioners who are the original defendant Nos.1 to 5 are aggrieved by the common order passed below Exhibits-43, 45 and 47. By the application below Exhibit-43 the plaintiff had prayed that the defendant No.6-respondent No.2 herein be directed to deposit in Court the amounts due towards the supply of sugarcane. By the application below Exhibit-45 the defendant No.1 has prayed that the defendant No.6 be directed to pay him an amount of Rs.1,39,364/-. Similarly, by application below Exhibit-47 the defendant No.2 had prayed that the defendant No.6

be directed to pay an amount of Rs.1,59,534/- to him. By the order dated 28/09/2018 the trial Court rejected the applications in question but directed the defendant No.6 to deposit the amounts due in Court within period of fifteen days.

3. Shri A. B. Mirza, learned counsel for the petitioners submitted that the trial Court having prima facie observed that the sugarcane in question was not from the field of the plaintiff, the applications at Exhibits-45 and 47 ought to have been allowed. There was no question of awaiting final decision in the suit as there was sufficient material on record to indicate that the sugarcane was from the fields of defendant Nos.1 and 2.

4. Shri J. K. Matala, learned counsel for the respondent No.2 submits that pursuant to the order passed by the trial Court amount of Rs.2,88,900/- has been deposited in the trial Court. As observed in the impugned order the party succeeding in the suit would be entitled for that amount.

5. After hearing the learned counsel for the parties it is seen that the trial Court in paragraph 14 of the order has observed that without there being evidence on record it would be difficult to

record a finding as to whether the sugarcane was from the field of the plaintiff or whether it belonged to defendant Nos.1 and 2. Presently the evidence in suit is yet to be recorded and therefore no fault can be found with the prima facie observations of the trial Court in the impugned order. At the same time liberty can be granted to the petitioners herein to apply for withdrawing the amount of Rs.2,88,900/- as deposited by the defendant No.6. The said amount can be secured by calling upon the party seeking such withdrawal to furnish solvent surety/security with further undertaking that if the party withdrawing that amount is not found entitled to the same, the amount in question would be repaid with interest at such rate the trial Court may direct.

6. In that view of the matter the writ petition is disposed of by passing the following directions :

In the light of deposit of an amount of Rs.2,88,900/- by the defendant No.6, the orders passed below Exhibits 43, 45 and 47 at this stage do not call for any interference. However, the defendant Nos.1 and 2 are granted liberty to apply to the trial Court for permission to withdraw the said amount as deposited. The trial Court shall consider that request and to secure the said amount by calling upon that party to furnish solvent surety/security, if it is

permitted to be withdrawn. Similarly, an undertaking of repayment with interest can also be obtained from such party.

The proceedings in the civil suit are expedited.

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

JUDGE