

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO.5530 OF 2007

Suresh s/o Dnyanchandra Rukme
Age 47 years, Occ. Agriculture and
Legal practitioner, R/o. At present
Gunj Golai, Azamgunj, Latur
Tq. and district Latur

...Petitioner
(Ori. Plaintiff)

versus

Manchakrao s/o Baliram Done
Age 47 years, Occ. Agri. and
Legal Practitioner, R/o. Sambhaji Nagar
Opp. Collectorate Office
Barshi Road, Latur
Tq. and district Latur

...Respondent
(Ori. Defendant)

.....
Advocate for Petitioners : Mr. V D Gunale
.....

CORAM : V. K. JADHAV, J.
DATED : 11th FEBRUARY, 2020

ORAL JUDGMENT:-

1. Heard learned counsel for the petitioner-original plaintiff. None present of the respondent-original defendant.
2. The petitioner-plaintiff has instituted the suit bearing Summary Suit No. 3 of 2007 for recovery of amount of Rs.5,51,250/-. By order dated 22.6.2007, the learned IInd Joint Civil Judge, Senior Division, Latur, directed to treat the suit as Regular Civil Suit though registered as summary suit for the reason that the court has no summary power to the extent of recovery of the amount to the tune of Rs.5,51,250/-. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the suit instituted by the petitioner-plaintiff squarely falls in the category as enumerated under Order XXXVII Rule 2 clause (b) of C.P.C. Learned counsel submits that even the principal Court of Civil Judge, Senior Division, Latur has also ordered that the suit be registered as summary suit vide order dated 12.4.2007 and accordingly the suit was registered as Summary Suit No. 3 of 2007. Thereafter, the learned principal Civil Judge, Senior Division, was pleased to pass order to transfer the said suit for its disposal to the IInd Joint Civil Judge, Senior Division, Latur vide order dated 12.4.2007. Accordingly, the said suit was transferred to the court of IInd Joint Civil Judge, Senior Division, Latur. Even the learned IInd Joint Civil Judge, Senior Division, Latur was pleased to order summary suit summons to the defendant on 26.4.2007. The respondent-defendant was served with the summary suit summons and appeared in the matter on 22.6.2007 and sought time for filing his say. However, behind the back of the counsel for the petitioner, the learned Judge without any notice and without hearing, passed order treating the said suit as Regular Civil Suit. Learned counsel submits that the impugned order is contrary to the provisions of law and violative of the principles of natural justice.

4. On careful perusal of copy of plaint, prima facie, it appears that the suit instituted by the petitioner-plaintiff squarely falls in the

category as mentioned in Order XXXVII sub-Rule (b) of Rule 2 of C.P.C. Even the principal Civil Judge, Senior Division, Latur has passed order to register the suit as summary suit and transferred the said suit bearing Summary Suit No. 3 of 2007 to the IInd Joint Civil Senior Division, Latur for disposal according to law. In terms of the provisions of Order XXXVII Rule 3 of C.P.C. the procedure of appearance of the defendant has been prescribed. However, it appears from the impugned order that the learned Judge has directed to treat it as Regular Civil Suit only for the reason that he has no power to decide the summary suit. The same is contrary to the provisions of Order XXXVII of C.P.C. The petitioner is original plaintiff and his suit is pending since then. The impugned order came to be passed way back in the year 2007. At present, the suit can be disposed of by the court having power to decide the summary suits. Thus, the learned District Judge or the principal Civil Judge, Senior Division, as the case may be, may pass appropriate orders transferring the pending suit to the appropriate court having summary powers to dispose of the suit.

5. Needless to say that the order dated 22.6.2007 impugned in this writ petition is hereby quashed and set aside. The writ petition is allowed and disposed of. Rule is made absolute in the above terms.

(V. K. JADHAV, J.)