

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

Writ Petition No. 6508 of 2019

Rajendra Choudhary Vs. Dr. Smt. Nayantara Vasudeo and others

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

Court's or Judge's orders

Mr. Sunil Manohar & Mr. C.F. Bhagwani, Advocate for the petitioner
Mrs. Pushpa D. Sood, Advocate for the respondent No.1.
None for the respondent No.2.
Mr. P.S. Chawhan, Advocate for the respondent No.3.

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 13, 2020

By this writ petition, the petitioner (original defendant No.2) has approached this Court challenging order dated 28/08/2019, passed by the Court of 3rd Jt. Civil Judge (Senior Division), Nagpur (Trial Court), whereby an application filed on behalf of the petitioner (Exh.86), for drawing of compromise decree or dismissal of the suit in default against original plaintiff Nos. 1 and 2, has been rejected.

2. The facts leading up to filing of the present writ petition are that the respondents herein had filed two suits against the petitioner and one other person bearing Special Civil Suit No.859/2008 (for partition and separate possession) and Regular Civil Suit No.95/2010 (challenging Will Deed dated 10/12/2004).

3. The material on record indicates that in so far as Spl.C.S. No.859/2008, is concerned, the same stood disposed of as withdrawn as respondents (original plaintiffs) did not intend to pursue the reliefs sought in the said suit. It is also an admitted position that the respondents No.1 and 2 i.e. original plaintiffs No. 1 and 2 in RCS No.95/2010, individually settled the matter with the petitioner herein. Accordingly, they have no grievance against the petitioner (original defendant No.2). But, the respondent No.3 (original plaintiff No.3) claims that the basis of settlement between him and the petitioner (original defendant No.2) was fraudulent and that he did not intend to abide by the terms of settlement between him and the petitioner herein. As a result, the respondent No.3 (original plaintiff No.3) intends to pursue RCS No.95/2010, whereby the aforesaid Will Deed is made subject matter of challenge.

4. As the dispute between the original plaintiffs No. 1 and 2 (respondents No.1 and 2 herein) was settled with the petitioner, the above-mentioned application at Exh.86 was filed by the petitioner, wherein following prayers were made.

“1. Pass a compromise decree as stated above in between the plaintiff no.1 and 2 and defendants or,

2. Pass a order thereby dismissing in default the suit filed by the plaintiff no.1 and 2 against the defendants for their prolonged absence or any

appropriate order in the interest of justice.”

5. It was contended on behalf of the petitioner before the Trial Court that since the respondents No. 1 and 2 herein had settled the dispute with the petitioner, no cause of action survived and that, therefore, the plaint could be rejected under Order 7 Rule 11 of the Code of Civil Procedure or it could be dismissed in default in so far as they were concerned. This contention was rejected by the Court below. In so far as the relief sought in the application to the effect that the suit could be dismissed in default at least in so far as the respondents No.1 and 2 were concerned in view of settlement between the parties, the Trial Court in the impugned order held that the said relief could not be granted because the respondent No.3 (original plaintiff No.3) is still prosecuting the remedy in the aforesaid pending suit.

6. It is this approach adopted by the Trial Court in refusing to entertain the alternative prayer made on behalf of the petitioner, which is made subject matter of challenge in the present writ petition.

7. Mr. Sunil Manohar, learned Advocate appearing for the petitioner invited attention of this Court to the documents placed on record which clearly indicate that the respondents No.1 and 2 (original plaintiffs No.1 and 2) have already settled their dispute

with the petitioner. In so far as the respondent No.2 (original plaintiff No.2) is concerned, it is an admitted position that he has not been appearing in the Trial Court in pending RCS No.95/2010 and it is a matter of record even before this Court that despite service of notice the respondent No.2 has chosen not to appear and contest the matter. On this basis, it is submitted that there was no impediment for the Trial Court to have accepted alternative prayer made on behalf of the petitioner for dismissing RCS No.95/2010, in default in so far as the respondents No.1 and 2 were concerned.

8. On the other hand, learned Advocate Mrs. P.D. Sood appearing for the respondent No.1 (original plaintiff No.1) submitted that although respondent No.1 undertakes to abide by the compromise that she has entered into with the petitioner herein, in so far as specific stand taken by the respondent No.3 (original plaintiff No.3) before the Trial Court, wherein certain allegations were made against the respondent No.1, she wants to be on record in RCS No.95/2010. The exact nature of grievance sought to be projected on behalf of the respondent No.1 is stated in the reply filed before this Court, which reads as follows :

“That, the respondent no.1 is required to continue to be the party to the said suit bearing no. RCS 95/2010 in order that she could defend herself since the respondent no.3 has made certain allegations against the respondent no.1, as is apparent from the plaint and that the Learned Trial Court has directed the respondent no.3 to substantiate

its contention by leading evidence.”

9. As noted above, none has appeared on behalf of the respondent No.2 (original plaintiff No.2).

10. Learned counsel Mr. P.S. Chawhan, appearing for respondent No.3 submitted that no interference is warranted in the impugned order passed by the Trial Court, but, he was unable to demonstrate as to why the alternative prayer made on behalf of the petitioner for dismissing the suit in default in so far as the plaintiffs No.1 and 2 were concerned, was not justified.

11. Heard the learned counsel before this Court. The learned counsel for respondent No.1 reiterates and undertakes on behalf of the said respondent to abide by the settlement arrived with the petitioner (original defendant No.2) even before this Court. Therefore, in so far as the respondent No.1 is concerned, there can be no doubt about the fact that she does not intend to pursue the prayers made in RCS No.95/2010. Yet, on the basis of apprehension expressed in the above quoted paragraph from the reply filed on behalf of the respondent No.1, it is contended by the learned counsel for respondent No.1 that the said respondent ought to be permitted to remain on record in RCS No.95/2010, in order to contest certain allegations said to have been made against her by the respondent No.3

(original plaintiff No.3). Accordingly, she is permitted to continue on record. But, it is made clear that this is only for the purpose as stated above, to contest any adverse allegations that may have been made or may be made in future by the respondent No.3 (original plaintiff No.3) against her. It is recorded that the respondent No.1 shall not be allowed to go back on her undertaking and that she shall abide by the compromise entered between her and the petitioner (original defendant No.2). In so far as the respondent No.2 is concerned, it is an undisputed fact that the said respondent (original plaintiff No.2) has not been attending proceedings in RCS No.95/2010, in the backdrop of the fact that he has already settled his dispute with the petitioner (original defendant No.2). Therefore, in so far as the respondent No.2 (original plaintiff No.2) in RCS No.95/2010 is concerned, it is held that the suit is dismissed in default. The Trial Court clearly committed an error in refusing to entertain the alternative prayer made on behalf of the petitioner, despite material on record.

12. In so far as the respondent No.3 (original plaintiff No.3) is concerned, it is his stated stand before the Trial Court and even before this Court that he intends to pursue RCS No.95/2010 and, therefore, there is no question of dismissal of suit as against the said respondent.

13. In view of above, the writ petition is partly allowed.

14. The impugned order is modified to the extent that it is held that RCS No.95/2010, is dismissed in default in so far as the respondent No.2 (original plaintiff No.2) is concerned. The respondent No.1 (original plaintiff No.1) is permitted to be retained on RCS No.95/2010, only to contest any adverse allegations that may have been made or may be made in future by the respondent No.3 (original plaintiff No.3).

15. The writ petition is disposed of.

16. In view of the facts and circumstances of the present case, the Trial Court is directed to dispose of said suit expeditiously and in any case within a period of six months from today.

JUDGE