

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

Writ Petition No.8268 of 2019
Hukumchand Bahekar Vs. Ghanshyam Pathode

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

Court's or Judge's orders

Mr. D.V. Mahajan, Advocate for the petitioner

CORAM : MANISH PITALE, J.

DATED : JANUARY 14, 2020

The petitioner (original plaintiff) has filed this writ petition challenging order dated 08/11/2019, passed by the Court of Civil Judge (Junior Division), Amgaon, whereby an application for stay of the suit under Section 10 of the Code of Civil Procedure, 1908 (CPC) (Exh.115), has been rejected.

2. It was claimed by the petitioner that the suit in the present case i.e. Regular Civil Suit No.46/2001, was pending in the form of Second Appeal before this Court. According to the petitioner, so long as aforesaid Second Appeal No.154/2013, was pending and yet to be decided by this Court, the proceeding in R.C.S. No.6/2001, were required to be stayed under Section 10 of the CPC.

3. The Court below has considered the claims made on behalf of the petitioner. It is found, firstly,

that a similar application had been moved on behalf of the petitioner on an earlier occasion bearing Exh.87, which had been rejected by the Court below. It is an admitted position that challenge raised to the said order stood rejected before this Court, as a result of which the said order attained finality. Secondly, the Court below found that the petitioner had failed to place on record a certified copy of plaint of Regular Civil Suit No.46/2001 and that, therefore, application filed under Section 10 of the CPC in the present case deserved to be rejected. It was found that there was nothing to show that the parties in both the suits were same or that RCS No.46/2001, was a previously instituted suit.

4. The learned counsel appearing for the petitioner submitted that insistence on filing of certified copy of plaint in RCS No.46/2001, was improper on the part of the Court below. It was submitted that the aforesaid earlier suit was a suit for possession concerning the very agreement dated 13/07/1991, specific performance of which was sought in RCS No.6/2001. On this basis, it was contended that power under Section 10 of CPC ought to have exercised by the Court below to stay the proceedings in that suit.

5. The material on record shows that RCS No.6/2001, has been pending for about 19 years

before the Court below. The petitioner had admittedly moved an identical application at Exh.87, earlier in point of time, which was rejected and the said order attained finality upon dismissal of the writ petition filed by the petitioner to challenge the said order.

6. Even if insistence on certified copy of plaint may not have been proper on the part of the Court below, on specific query put to the learned counsel appearing for the petitioner to show as to how the issues arising in the two suits could be said to be similar, it was contended that in RCS No.46/2001, a specific issue had been framed with regard to question as to whether the petitioner was in possession of the suit property in pursuance of the very agreement of which the specific performance was sought in RCS No.6/2001.

7. This Court fails to understand as to how there can be said to be commonality of issues in the two suits. Even if question of grant or otherwise of decree of specific performance was to be considered in RCS No.6/2001, it would hardly have similarity or commonality with the question of possession, which was subject matter of RCS No.46/2001.

8. The Court below is justified in observing that such applications have been repeatedly moved on behalf of the petitioner, only to delay the proceedings

before the Court below.

9. In view of above, it is found that there is no merit in the present writ petition and accordingly, the writ petition is dismissed.

10. The present suit is pending since the year 2001 and, therefore, the Court below is directed to dispose of the present suit expeditiously and in any case within a period of six months from today.

JUDGE

MP Deshpande