

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2968 OF 2021

Milind Bhagwat Pokharkar .. Petitioner
Vs.
Govind Yashwant Khalade and Ors. .. Respondents

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Mr. Prashant Katneshwarkar a/w Sagar Kursija i/b Deepali
Kedar for the Petitioner.

Mr. S.B. Desai, for Respondent Nos. 1 to 3.
Mr. Sachin S. Punde, for Respondent No. 4.

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CORAM : SMT. BHARATI DANGRE, J.
DATED : 07TH OCTOBER, 2021.

P.C:-

1. The present petition is filed by the Petitioner who is original Respondent No. 18 in Special Civil Suit No. 1913 of 2007. He is aggrieved by the order passed by the 3rd Jt. Civil Judge, Senior Division, Pune on 20th March 2021 below Exh. 262.

2. Shorn of the unnecessary facts, I would only refer to three documents. Exhibit No. 250 is an application

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moved by Defendant No. 18 alleging that the defendant is apprehensive that something is wrong in the proceedings and an application for perjury has been moved in the Court of Civil Judge, Senior Division Pune, vide Miscellaneous Civil Application No. 466 of 2018. It is stated that the plaintiffs have noticed the said application on 7th September 2021. A relief is sought that awaiting the order on the said application, proceeding of the said suit shall be stayed. The plaintiffs gave no objection on the said application, which resulted in the following order being passed:-

“ In view of the contents of the application and no objection of the plaintiff, the application is allowed”.

3. After a gap of considerable time and, to be precise on 15th February 2021, the plaintiffs probably realising the mistake, moved an application vide Exhibit 262, requesting the Court to recall their no objection and to proceed with the said suit. A response is filed to the said application on 28th March 2021, wherein the time is sought to proceed with the matter on the ground that there is a new advocate who has been engaged in the suit. One month's time is, therefore, granted in the interest of justice. On Exhibit 262, the learned Judge passed the

following order

“ Perused the application. No say is filed by defendant No. 18. To contest the suit on merit, if remedy is available to both parties. Hence application is allowed.”

4. Both the orders passed by the learned Judge i.e. firstly the order staying proceedings and secondly the order vacating the stay and directing the suit to proceed, are non speaking order.

5. Learned Counsel for the original plaintiff vehemently submits that the application under Section 340 of Cr.P.C. do not bear any relevance to the suit since it is filed against some of the co-defendant and not against the plaintiff. It is for the parties to advance submissions before the learned Judge and the learned Judge is expected to pass a reasoned order when he directs continuation of the suit by recalling its earlier order. Since the impugned order passed is non reasoned order, the said order is set aside. The parties shall advance their submissions on Exhibit 262.

6. It is made clear that proceedings are pending for long time and this application should not detain the trial Court, once the issue whether it has to proceed, is determined and then the trial of the suit shall progress.

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7. The learned Civil Judge Senior Division, Pune, is therefore directed to hear the parties on Exhibit 262 and since it is informed that the suit is scheduled for hearing on 20th October 2021, the learned Judge shall hear the parties on Exhibit 262 on the said date of hearing and if required reschedule its hearing, but in any case it shall not take more than four weeks to conclude the hearing and passing of order on the same.

8. With the aforesaid direction, Writ Petition is disposed off.

[SMT. BHARATI DANGRE, J.]