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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8078 OF 2019**

NENSEE CONSTRUCTIONS PVT. LTD.

....PETITIONER

V/s.

MADHAVSINGH GORDHANDAS

.....RESPONDENT

**Mr. Ghanshyam Upadhyay i/b Law Juris for the petitioner
Mr. Prashant Chawan a/w Murari Madekar a/w Mr. Sachin Kudalkar
i/b Madekar & Co. for respondent**

CORAM : NITIN W. SAMBRE, J.

CLOSED FOR ORDERS : AUGUST 11, 2021.

PRONOUNCED ON: AUGUST 30, 2021.

P.C.:

1] Heard Shri. Ghanshyam Upadhyay, learned counsel appearing for the petitioner and Mr. Prashant Chawan, learned counsel appearing for respondent.

2] This petition is by defendant no. 9 questioning the orders dated 25/06/2019 and 26/06/2019 passed in Notice of Motion Nos. 448/2019 and 3509/2018. By these orders, Notice of Motion preferred by the petitioner-defendant no. 9 came to be rejected.

3] Shri. Upadhyay, learned counsel for the petitioner has tried to canvass that successive Judge ought to have given fresh opportunity to the petitioner on the issues sought to be canvassed particularly when the matter is posted for pronouncement of judgment before other Judge.

4] So as to substantiate his contentions, he has invited attention of this Court to the impugned orders which are produced at Exhibit 'A' collectively.

5] Mr. Chawan, learned counsel appearing for respondent-plaintiff would urge that approach on the part of the successive Judge is in tune with law as spelt out from the provisions of Order XVIII and XX of the Code of Civil Procedure, 1908.

6] Respondent initiated aforesaid suit before this Court which was later on transferred to City Civil Court in 1987 seeking relief of declaration with regard to 1/4th share in the property. Some of the

shares from co-owners were purchased by the petitioner. It is the contention of the petitioner that he is a bonafide purchaser pursuant to the conveyance deed dated 09/06/2006.

7] In the aforesaid background, attempt to get Plaint rejected pursuant to Order VII Rule 11(a) (d) r/w Section 9A of the Code of Civil Procedure, 1908 was unsuccessful.

8] The Suit has reached at the stage of pronouncement of judgment at which stage, petitioner has moved the aforesaid Notice of Motions. In these Notice of Motions, petitioner has prayed for recalling/setting aside of orders viz. order dated 28/04/2018 for giving direction to the defendants to proceed with issue Nos. 6(a) & 6(b), order dated 19/06/2017 and 21/09/2017 for closure of evidence of defendants on issue nos. 6(a) and 6(b), order dated 08/06/2018 in respect of closure of cross-examination of plaintiff on behalf of defendant no. 9, order dated 11/07/2018 by which the matter was fixed for final argument and order dated 30/06/2018 by which the matter is fixed for judgment. As such, defendant no. 9 has sought re-trial by permitting him to submit draft issues.

9] By a detailed reasoned order, said application i.e. Notice of Motion No. 3509/2018 came to be rejected on 25/06/2019. Similarly, another Notice of Motion No. 448/2019 came to be moved in aforesaid Notice of Motion No. 3509/2018 wherein delay was sought to be condoned in questioning the order dated 21/09/2017.

10] The fact remains that Suit is going on since 1986 and as reached at the stage of pronouncement of judgment at which stage, aforesaid proceedings are taken out. The nature of proceedings taken out by the petitioner are nothing but his efforts to prolong the litigation.

11] While dealing with Notice of Motion No. 3509/2018, the Court considered the contentions of the petitioner that he was unaware about dismissal of Notice of Motion for which blame is passed on to his earlier Advocate and his juniors.

12] The Court below considered the very approach of the petitioner

and noted that petitioner has conducted himself in most casual manner. He has shown complete disregard and disrespect to the Court proceedings. The Court then observed that Rozanama reflects orders which were passed due to negligent attitude of the present petitioner. Apart from above, the law on the issue as to recalling of the order, once the matter is posted for pronouncement of Judgment is abundantly clear. The Court, in my opinion, was justified in relying on the Judgment of the Apex Court in the matter of **Arjun Singh V/s. Mohindra Kumar and others**¹. While dealing with Notice of Motion No. 448/2019, the Court in my opinion, was justified in observing that Petitioner-Defendant no. 9 has not explained the delay. The reason cited in support are not bonafide. It is claimed by the petitioner-defendant no. 9 that he gave preference to his business over the Court proceedings.

13] The issue as regards hearing to be continued by Presiding Officer is already covered by the Judgment of the Apex Court in the matter of **Rasiklal Manikchand Dhariwal and another V/s. M.S.S. Food Products**².

¹ AIR 1964 Supreme Court 993

² (2012) Supreme Court Cases 196

14] In that view of the matter, in my opinion, no case for interference in extraordinary jurisdiction is made out. Petition as such stands dismissed.

[NITIN W. SAMBRE, J.]