

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

WRIT PETITION NO. 1789/2020

Tulsi Agro Industries,
A registered Partnership Firm,
through its Constituted Attorney,
Satyanarayan Ramesh Bhattad,
Shegaon-Khamgaon Road, At Post
Savarna, Tq. Shegaon, Dist. Buldana**PETITIONER**

...VERSUS...

M/s. Raghunath Agrotech Pvt. Ltd.
A company registered under the
Companies Act, through its
director Rajeevkumar Mittal
s/o Raghunath Mittal, aged 49 years,
Business, National Highway No.7,
Adilabad, Tq. Dist. Adilabad (AP)**RESPONDENT**

Mr. B. N. Mohta, Advocate for appellant.
Mr. S. Saoji, Advocate for respondent.

CORAM:- V. M. DESHPANDE, J.
DATED :- 12.01.2021

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties. Heard Mr. Mohta, learned counsel for petitioner and Mr. Saoji, learned counsel for respondent.

2. The respondent herein filed a suit in the Court of learned Civil Judge Senior Division, Adilabad. The said was registered as O.S. No.68/2011 for recovery of amount of Rs.1,49,045/-. The present petitioner, in spite of service of summons, did not appear and, therefore, Adilabad Court proceeded ex parte against the present petitioner. The learned Civil Judge Senior Division, Adilabad decided the suit on 19.12.2013, which came before the said Court for final hearing and decreed the suit for Rs.1,49,045/- along with interest at the rate of 18% per annum from the date of the suit till the date of decree.

3. Undisputedly, the respondent got transferred the decree from Adilabad at Shegaon since the petitioner is having properties within the jurisdiction of Shegaon Court and the said was registered as Regular Darkhast No. 2/2017.

4. In the year 2011, petitioner also filed a suit against the respondent at Shegaon Court. The same was registered as Regular Civil Suit No.44/2011. The suit was for balance amount of damages for non delivery of cotton seeds. The said suit is

decided by the learned Joint Civil Judge Junior Division, Shegaon on 27.07.2018 in which the learned Civil Court at Shegaon directed the present respondent to pay an amount of Rs.36,521/- within a period of one month from the date of the decree.

5. It is not disputed before this Court that petitioner herein, who is a decree holder in Regular Civil Suit No. 44/2011 has not filed execution for executing the decree granted in its favour by Shegaon Court.

6. In the execution of the transferred decree, the petitioner herein deposited the amount in the executing Court at Shegaon i.e. amount of Rs.2,63,010/-. In the execution proceeding i.e. R. D. No.2/2017, the present respondent filed an application for withdrawal of the amount deposited by the petitioner. It was objected by the petitioner. He also filed an application for refund of the amount deposited in the Court by the petitioner. The said is at Exh.-23 on the record of the executing Court.

7. The learned executing Court, on 09.01.2020, allowed the application filed on behalf of respondent and also directed the

petitioner to file separate execution proceedings to get the decree executed which was quashed in Regular Civil Suit No. 44/2011. Against this order dated 09.01.2020, present writ petition is filed.

8. Mr. Mohta, learned counsel for the petitioner submitted that the petitioner is also decree holder and in his favour the Civil Court has given a decree and it is not challenged by the present respondent. It is his submission that decree is granted in favour of the petitioner after adjusting the amount of Rs.1,49,045/- which was granted in favour of respondent by the Adilabad Court.

9. The judgment and decree in Regular Civil Suit No. 44/2011 filed by the present petitioner is on record. It is from page nos. 36 to 44 of this writ petition. It is the submission of the learned counsel for the petitioner that he has claimed adjustment of the amount in the plaint itself. Paragraphs 21 and 22 of the judgment in Regular Civil Suit No. 44/2011 are relevant and they are reproduced hereinbelow:

“21. Defendant has filed his evidence vide Exh.46. Defendant relied on the evidence of Rajeevkumar Mital who is Director of the defendant

company. He reiterate the contents of the written statements. In cross-examination he admitted that he has not filed resolution of the company as to the authority given to him in respect of present suit. He admitted that he had transaction with broker Sarthi in the year 2009. Counter note at Exh.25 and Exh.26 also discloses the name of his broker. It proves the transaction between the parties. Defendant filed copy of Judgment and decree in O.S.No.68/2011 vide Exh.50 and Exh.51. This copies show that defendant has filed suit for recovery of Rs.1,49,045/-against the plaintiff. Which came to be decreed. In the course of cross-examination nothing came to record to disbelieve plaintiffs case.

22. In such the evidence of the plaintiff has demonstrated that on 19-12-2010 defendant was in arrears of Rs.36521/-. As defendant failed to comply with the contract. Needless to say that plaintiff is entitled for the recovery of Rs.36521/- from the defendant. Accordingly I answer points no.2 to 5 collectively in the affirmative and issue no.1 does not survive.”

From perusal of the above, it is crystal clear that learned Joint Civil Judge Junior Division, Shegaon granted a decree of Rs.36,521/- in favour of the petitioner. It is to be noted here that though set off was claimed in the plaint by the

petitioner, it was not granted to him in judgment and order dated 27.07.2018. Therefore, it is crystal clear that said claim of the petitioner was disallowed by the Civil Court and still the petitioner did not file any appeal against the said.

10. In that view of the matter, though certain judgments are sought to be pressed into service, they are not at all necessary to be considered and, therefore, I am not considering those judgments.

11. Learned counsel for respondent has submitted and it is not disputed by learned counsel for the petitioner that the respondent has already withdrawn the amount of Rs.2,63,010/-, which is deposited by the petitioner in the execution. The impugned order shows that the petitioner can very well execute the decree granted in his favour by filing separate execution. Hence, there is no merit in the present petition. The same is, therefore, dismissed.

Rule is discharged. No order as to costs.

JUDGE

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