

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 4464 OF 2018

(Omprakash S/o. Sudamamal Mohnani vs. Smt. Sushila W/o Khemraj Kachhawa & anr.)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A. T. Purohit, Advocate for petitioner.
None for the respondents.

CORAM : MANISH PITALE J.

DATE : 21/08/2021

The original plaintiff is before this Court challenging order dated 04/01/2018 passed by the Court of Civil Judge, Senior Division, Wardha, whereby an application at Exh.21 filed by the respondents (original defendants) for framing of additional issues has been allowed.

2. In this petition, notice was issued and interim relief was granted on 25th July, 2018. The respondents were served and they entered appearance before this Court through counsel. This petition was called out in the morning, when the learned counsel for the petitioner addressed this Court on the issues that arise in writ petition. Since the learned counsel for the respondents was not present, this Court passed over the matter in order to

give opportunity to the counsel to appear before this Court.

3. After pass over, when the petition is called out for hearing at the end of the board, again none has appeared on behalf of the respondents. Accordingly, the learned counsel for the petitioner was heard in detail. This Court perused the reply / submissions filed on behalf of the respondents before this Court.

4. The learned counsel for the petitioner contends that the Court below erred in passing the impugned order, for the reason that the two additional issues directed to be framed at the behest of the respondents do not satisfy the requirement under Order 14 Rule 5 of the Civil Procedure Code, 1908 (CPC). It is contended that such issues are not necessary for determining the matters in controversy between the parties.

5. In order to support the said contention, the learned counsel for the petitioner invited attention of this Court to the contents of the plaint, stating that the petitioner has filed a suit for specific performance in respect of an agreement dated 21/03/2014. It is submitted that specific clause No.

(8) in the said agreement requires the respondents to seek permission of the Municipal Council, Wardha, for execution of the Sale Deed and that the respondents would be obliged to bear the expenses for the said exercise.

6. It is pointed out that on 11/03/2015, the Court below framed issues and the matter was to proceed further. On 01/02/2016, the respondents moved the aforesaid application at Exh.21 for framing of additional issues. The respondents desired that the following additional issues be framed.

“i) Is the suit bad for Non-Joinder of necessary party i.e. Municipal Council Wardha ?

ii) Whether the leasehold rights can be transferred by grant of Decree of specific performance ?”

7. It is contended that the said issues have no concern with the controversy between the parties in the present case, which pertains to the rights of the petitioner for a decree of specific performance in the context of the aforesaid agreement. It is submitted that even if clause (8) in the said agreement is to be taken into account, there is no reason why the Municipal Council could be said to be necessary party,

in the facts and circumstances of the present case and no issue to that effect would arise at all. On the question of whether the property in the present case was with the defendants on the basis of leasehold rights was also something foreign to the controversy between the parties in the suit filed by the petitioner. Yet, the Court below allowed the aforesaid application and according to the learned counsel for the petitioner, the impugned order deserved to be set aside and the application at Exh.21 deserved to be dismissed.

8. In the reply filed on behalf of the respondents, the issues framed by the Court below, on 11/03/2015, have been quoted and they read as follows :-

"ISSUES

1) Whether plaintiff prove that defendants entered into an agreement dated 21.03.2014 to sell the suit properties to the plaintiff for the total consideration of Rs.44,00,000/- and paid Rs.11,00,000/- to defendants towards earnest amount ?

2) Whether plaintiffs prove that he is and was always ready and willing to perform his part of contract ?

3) Whether plaintiffs prove that defendants were intentionally avoided to perform their part of contract ?

4) Whether defendant proves that the transaction is money lending transaction and not a sale transaction ?

5) To what relief the plaintiff is entitled ?

6) What order and decree”

9. It is then contended on behalf of the respondents that looking to the controversy between the parties and the specific clauses in the said agreement, the additional issues were necessary and that the Court below was justified in passing the impugned order.

10. Having perused the material on record, it needs to be examined as to whether the additional issues directed to be framed by the Court below can be said to be justified in the context of Order 14 Rule 5 of the CPC and in the backdrop of the real controversy between the parties.

11. A perusal of the above quoted issues framed on 11/03/2015 by the Court below would show that the real controversy in the present case is as to whether the petitioner is entitled to a decree of

specific performance on the basis of the agreement dated 21/03/2014 and the contentions raised on behalf of the petitioner as regards his readiness and willingness to perform his part of the contract. The real controversy between the parties is about the nature of the transaction reflected in the agreement dated 21/03/2014 and about the petitioner satisfying the mandatory requirements in law while seeking the decree for specific performance.

12. Merely because clause (8) of the said agreement enjoins the respondents to seek permission from the Municipal Council for execution of the Sale Deed in terms of the agreement, would not necessarily lead to a conclusion that the Court in the present case would be required to go into the question regarding alleged leasehold rights of the respondents in the suit property. Once the petitioner is able to prove that he has satisfied the mandatory requirements for grant of decree of specific performance, consequent directions can be issued by the Court below on the question as to how such a decree is to be worked out in terms of the specific clauses of the agreement.

13. This, in any manner does not indicate that the Court below while deciding the controversy

between the parties would be required to go into the question of the nature of rights of the respondents in the suit property. Consequently, the presence of the Municipal Council before the Court below is wholly irrelevant for the real controversy between the parties. The Court below failed to appreciate this aspect of the matter, while passing the impugned order. A perusal of the impugned order also shows that the reasoning is found only in paragraph 3 and the application at Exh.21 filed by the respondents appears to have been allowed in a casual manner. No effort was made by the Court below to examine as to whether the prayers made in the application satisfied the requirement Order 14 Rule 5 CPC. Consequently, it is found that the impugned order is erroneous and it deserves to be set aside.

14. Accordingly, the writ petition is allowed, the impugned order is quashed and set aside and the application filed by the respondents at Exh.21 is dismissed.

JUDGE