

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

WRIT PETITION NO.7876 OF 2017

Rahul s/o Omprakash Gandhi
Vs.

M/s Akola Janta Commercial Co-operative Bank Limited and others

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

Court's or Judge's orders

Mr. S. N. Bhattad, Advocate for petitioner.
Mr. D. R. Khapre, Advocate for respondent No.1.

CORAM : AVINASH G. GHAROTE, J.
DATE : 01/12/2021

Heard Mr. Bhattad, learned counsel for the petitioner and Mr. Khapre, learned counsel for the respondent No.1.

2. The petition challenges the order dated 03.03.2017 passed by the learned Trial Court below Exh.95, insofar as direction Nos.2 and 3 contained therein. Mr. Bhattad, learned counsel for the petitioner, on instructions, does not press the challenge in the present petition so far as rejection of the application at Exh. 95, is concerned.

3. The direction Nos.2 and 3 contained in the order dated 03.03.2017 are as under:

“1 ”

2) Defendant no.1 Rahul Omprakash Gandhi is prohibited from filing further any type of application in this proceeding and he is also

hereby prohibited from participating in the proceedings of Special Civil Suit No.5/2012.

3) Defendant no.1 Rahul Omprakash Gandhi is also directed to deposit/pay cost of Rs.20,000/- (twenty thousand) to the State Government, for abuse of process of law. The cost shall be deposited within one month from the date of this order.”

4. Mr. Bhattad, learned counsel, contends that even if, the learned Trial Court found that the application at Exh.95 was not having any merit, the further participation of the defendant No.1/petitioner in the proceedings could not have been prohibited by the learned Trial Court, as that is against the very basic principle applicable in respect of an adversarial litigation. He therefore, submits that even if the defendant No.1/petitioner had filed successive applications under Order 7 Rule 11 CPC or applications raising the issue of maintainability of the suit, that by itself would not permit the learned Trial Court to shut off the participation of the defendant in the suit, as that would clearly result in passing of a decree against him without permitting him to raise any defence available to him in law. He submits that by the impugned order, as indicated to the above extent, the very right to get whatever defence available to him adjudicated is taken away. He further states on instructions, that the defendant No.1/ petitioner, would not file any further applications raising challenges to the jurisdiction or maintainability of the suit or rejection of the plaint and whatever challenges would be permissible,

would be taken in his written statement and would be adjudicated on merits. Even regarding the question of adjudicating the suit on merits, Mr. Bhattad, learned counsel for the petitioner, on instructions, submits that the defendant would not file any unnecessary applications or seek unnecessary adjournments and would fully co-operate in getting the suit decided on merits at the earliest.

5. Mr. Khapre, learned counsel for the respondent No.1/plaintiff, vehemently submits that the action on the part of the defendant No.1/petitioner in filing successive applications under Order 7 Rule 11 of CPC and Section 9-A of CPC are indicative of his attitude of procrastination which cannot be countenanced. He therefore, submits that considering the conduct of the defendant No.1/petitioner, the impugned order needs to be maintained.

6. Having heard the learned counsel for the parties, I am of the considered view that whatever be the conduct of the defendant, he cannot be restrained from participating in the proceedings, nor can his defence be shut off, more so, in exercise of the powers under Order 7 Rule 11(a) of CPC. No doubt, that the defendant No.1/petitioner has filed multiple applications raising questions about the rejection of the plaint on one ground or the other and so also regarding the maintainability of the suit, the rejection of such applications would not mean that the defendant would be dis-entitled from

participating in the further proceedings in the suit. It is material to note that the suit is stayed since 09.03.2018 and even the respondent No.1/plaintiff, is at a loss in view of the stalling of the proceedings, considering which, the direction No.2 as contained in the impugned order is hereby quashed and set aside.

7. The petitioner/defendant No.1, is held bound by the statement as made by Mr. Bhattad, learned counsel for the petitioner, as recorded in the earlier part of this order. Insofar as the direction No.3 is concerned, the same is maintained and the petitioner shall deposit this amount in the Court within a period of 15 days from the date of this order.

8. Considering that the suit is of the year 2012, the learned Trial Court is requested to decide the same as expeditiously as possible.

9. All pending applications before the learned Trial Court shall be heard and decided by the learned Trial Court on or before 18.12.2021.

10. The petition is therefore, partly allowed, in the above terms. No costs.

JUDGE