

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

926 WRIT PETITION NO.10848 OF 2022

**DINESH KUMAR RAMCHANDRA MODI PROP.
M/S SAI SALES CORPORATION AND OTHERS
VERSUS
AHMEDNAGAR URBAN CO OPERATIVE BANK
THROUGH ITS CHIEF EXECUTIVE OFFICER AND ANOTHER**

...
Advocate for Petitioners : Mr. Nilkanth P. Bangar

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CORAM : SANDEEP V. MARNE, J.

DATE : 19-10-2022

PER COURT :

. By this petition, the petitioner has assailed the order dated 02.09.2022 passed by the Cooperative Court, Ahmednagar rejecting the petitioner's application for framing of preliminary issue under Order-14, Rule-2 of the Code of Civil Procedure (hereinafter referred to as 'C.P.C.'). The petitioner had earlier filed application under Order-7, Rule-11 of the C.P.C. for rejection of plaint on the ground that the court does not have jurisdiction. That application was rejected by order dated 16.11.2018. The petitioner filed Writ Petition No.4035 of 2019 challenging the order dated 16.11.2018, which came to be withdrawn on 13.02.2020. Now, the suit fixed for final arguments. At this stage, the petitioner moved an application on 08.07.2022 for framing of preliminary issue of jurisdiction.

2. The learned counsel for the petitioner relies on the judgment of Apex Court in **Kuldeep Singh Pathania vs. Bikram Singh Jaryal, AIR 2017 SC 593** in support of his contention that scope of enquiry under Order 7, Rule 11 is limited where only the contents of the plaint are required to be considered, whereas upon issue being framed under Order 14, Rule 2 (2) the defendant can lead evidence on the issue of jurisdiction. He therefore submits that rejection of the petitioners' application under Order 7, Rule 11 would not come in his way to grant application under Order 14, Rule 2 (2) of the C.P.C.

3. While rejecting the petitioners' application for rejection of plaint under Order 7, Rule 11, by order dated 16.11.2018 the Court has recorded a specific finding that Cooperative Court, Ahmednagar has jurisdiction to entertain the suit. Though the petitioner filed Writ Petition No.4035 of 2019 challenging order dated 16.11.2018, the same was withdrawn for the reasons best known to the petitioner. Thereafter, the petitioner permitted the proceedings to go ahead and filed application belatedly on 08.07.2022 for framing of preliminary issue of jurisdiction under Order 14, Rule 2 (2). In my opinion such a conduct on the part of the petitioner shows delaying tactics.

4. Even though the scope of enquiry under Order-7, Rule-11 is limited and would ordinarily not come in way of decision of any particular issue finally, in the peculiar facts of the case where the petitioners moved the application under Order 14, Rule 2 (2) at the stage of final arguments of the suit, this Court would not exercise its jurisdiction under Article 227 of the constitution. The petitioner accepted position that the Cooperative Court, Ahmendagar has jurisdiction to entertain the suit and did not immediately file application for framing preliminary issue after rejection of his application Order 7, Rule 11 on 16.11.2018. Even after withdrawal of the writ petition on 13.02.2020 the petitioner awaited for two years and 5 months and thereafter filed application only to stall the final hearing of the suit. In these circumstances, I am not inclined to interfere in the impugned order. Writ Petition being devoid of merits deserves to be dismissed and is accordingly dismissed.

(SANDEEP V. MARNE, J.)