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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.436 OF 2022

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| 1. | Pratap Jagannathrao Patil
Age – 48 years, Occ – Presently Agriculture
and Formerly as Director of Shree
Marathwada Paper Mills (P) Ltd., Rohital
Taluka – Georai, District – Beed
R/o 2/3/Section B/ N-1 CIDCO,
Aurangabad 431 003 | PETITIONERS |
| 2. | Manisha d/o Rambhau Dandawate
@ Padmini w/o Pratap Patil
Age – 43 years, Occ – House Wife
R/o 203/ Section B/ N-1, CIDCO
Aurangabad 431 003
Though the Specially Constituted Power
of Attorney Holder, Pratap Patil
(Petitioner No. 1 herein) | |

VERSUS

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| 1. | Ashok Jagannathrao Patil
Age – 60 yrs, Occ – Business and
Formerly as the Managing Director
of Shree Marathwada Paper Mills (P) Ltd.,
Rohital, Taluka – Georai, District – Beed
R/o Plot No. 18/4, Sector C-5
Town Center, CIDCO,
Aurangabad 431 003 | RESPONDENTS |
| 2. | Nishigandha d/o Sudhakar Mahajan
@ Archana w/o Ashok Patil
Age – 53 years, Occ – House wife
R/o Plot No. 18/4, Sector C-5
Town Center, CIDCO,
Aurangabad 431 003 | |

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Mr. Pratap J. Patil, petitioner No.1, Party in Person
 Mr. Suresh P. Pandav, Advocate for the respondents

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th JANUARY, 2022

ORDER :

1. The petitioners, by this writ petition, challenge the judgment and order dated 5th October, 2021 passed by the learned Principal District Judge, Aurangabad in Miscellaneous Civil Application No. 163 of 2021, thereby rejecting the application filed under section 24 of the Code of Civil Procedure, seeking transfer of proceedings.

2. The petitioner No.1, who is the plaintiff in Commercial Suit No. 27 of 2019, is representing the suit as party in person. He is power of attorney holder of his wife, applicant in Miscellaneous Civil Application No. 305 of 2019 and respondent in Execution Application R.D. No. 641 of 2020, which are being conducted by him as party in person.

3. According to the petitioners, all the three proceedings i.e. Commercial Suit No. 27 of 2019, Miscellaneous Civil Application No. 305 of 2019 and Regular Darkhas No. 641 of 2020, are interconnected and they arise out of the dispute between two real brothers over partition of joint family business and properties held by the parties in accordance with family

settlement. These three matters are pending on the file of District Judge-1 (now District Judge-2).

4. According to the petitioners, on 22nd June, 2021 Miscellaneous Civil Application No. 305 of 2019 was listed for the first time before the presiding officer, after the COVID-19 Lock down and summer vacations. On that day, the matter was fixed for arguments on Exhibits-17 and 18 and not for hearing on the application filed under Order XLIV of the Civil Procedure Code. The Presiding Officer insisted the petitioners to argue the application filed under section XLIV of the Code. On that day, in the late hours, the petitioners tried to produce certain documents, however, the same were not accepted on the ground that the court time was over. The petitioners, therefore, on 23rd June, 2021, moved an application requesting to take the matter on board, to enable the petitioners to produce the documents. But the same was not accepted by the Presiding Officer.

5. As per the petitioners, Miscellaneous Civil Application No.305 of 2019 was fixed for order on 30th June, 2021, it was, therefore, necessary for them to file those documents on record. The connected matter i.e. Commercial Suit No. 27 of 2019 was posted on 24th June, 2021. The petitioners were directed by the Presiding Officer to come on 24th June, 2021, as the other side

advocate would remain present on that day. On 24th June, 2021, after hearing of Commercial Suit No. 27 of 2019, the petitioners pressed application for taking Miscellaneous Civil Application No. 305 of 2019 on board, however, their request was turned down by the Presiding Officer and the application was returned to the petitioners.

6. It is the further contention of the petitioners that Commercial Suit No. 27 of 2019 was fixed for hearing, for the first time after lock down, on 24th June, 2021 for arguments on Exhibit-59 i.e. application under Order VII, Rule 11 of the Code of Civil Procedure. On that day, an issue as to whether the dispute falls under the Commercial Category or not was raised. The petitioners prayed that before passing any order on Exhibit-59, preliminary issue be considered first. But their prayer was not accepted and the matter was kept for order on Exhibit-59. The petitioners, therefore, expressed an apprehension that they would not get justice and fair trial from the Presiding Officer and hence, they prayed for transfer of the proceedings before appropriate court.

7. The respondents resisted the transfer application on various grounds, including that an Arbitration Award for more than Six Crore Rupees is passed against the petitioners and they

are, therefore, trying to prolong the matter on one or the other pretext, by making incorrect and baseless allegations against the Presiding Officer. The petitioners want to prolong the proceedings.

8. After hearing the parties, the application filed by the petitioners, seeking transfer is rejected by the Principal District Judge. This order is impugned in the present writ petition.

9. Heard rival submissions of the party in person for the petitioners and learned advocate for the respondents at length.

10. Indisputably, all the proceedings came up before the Presiding Officer for the first time on 22nd June, 2021 and 24th June, 2021. Requests of the petitioners for adjournment of the matter and for accepting the documents on record, were not accepted by the Presiding Officer. This by itself is not sufficient to come to a conclusion that the Presiding Officer is biased against the petitioners. The apprehension of the petitioners that the Presiding Officer is biased and they will not get justice from him, is based on rejection of their requests to take the documents on record and for adjournment of the matter. This Court is of the considered view that there is no sufficient material on record for the petitioners to apprehend that the Presiding Officer is biased

against them. There appears substance in the contention of the respondents that as the Arbitration Award of more than Six Crore Rupees is passed against the petitioners, they are trying to prolong the matter on one or the other pretext.

11. Taking into consideration the fact that the matters were listed for the first time before the Presiding Officer on 22nd June, 2021 and 24th June, 2021, the apprehension entertained by the petitioners cannot be said to be reasonable. In this view of the matter, learned Principal District Judge, Aurangabad was right in rejecting the request of the petitioners to transfer the proceedings.

12. Learned Principal District Judge has passed a well reasoned order, which needs no interference in the extraordinary writ jurisdiction. The writ petition, being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE