

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.7374 OF 2014

Iqbal Ahmed Mohammad Haroon Petitioner.

**Vs.
Iqbal Ahmed Mohd. Yusuf
through LR's & Ors.**

.... Respondents.

Mr.Sagar Kasar a/w Ms Chaitali Bhogle a/w Dnyaneshwar Jaibhave for petitioner.

Mr. Anilkumar K. Patil for respondent nos.2, 3, 4-A to 4D.

CORAM : N.R. BORKAR, J.

DATE : 9th MARCH, 2022.

PC.:

1. This petition takes an exception to the order dated 22.1.2014 passed by the 4th Joint Civil Judge, Junior Division, Malegaon in C.M.A. no.67/1993.

2. The petitioner herein had filed R.C.S.No.59/1991 against the respondents for perpetual injunction and declaration. The said suit was filed through Advocate Samad Y.Ansari. In the said suit, the petitioner had filed an application for temporary injunction. The said application was allowed on 16.12.1991 and respondents were restrained from interfering with the possession of the petitioner over the suit property. According to the petitioner, the suit was then adjourned to 28.06.1993. According to the

petitioner, on 03.04.1993 one Advocate-V.T.Rokade filed his Vakalatnama with forged signature of the petitioner. According to the petitioner on the very same day, the said Advocate Shri V.T.Rokade, made an application with prayer that matter be taken on board. It is alleged that said Advocate Shri V.T.Rokade on the very same day submitted pursis to withdraw the suit with forged signature of the petitioner. According to the petitioner, in view of pursis, the trial court had dismissed the suit by its order dated 06.04.1993.

3. The petitioner after coming to know about dismissal of the suit, had filed an application for restoration of the suit by recalling the order dated 6.4.1993. The trial court rejected the said application by the order impugned.

4. I have heard the learned Counsel for the petitioner and the learned counsel for the contesting respondents.

5. The learned counsel for the petitioner submits that the interim injunction was operating in favour of the present petitioner. It is submitted that prior to assigned date, the application was moved to take the matter on board and suit was withdrawn by filing withdrawal pursis with forged signature of the petitioner and by impersonation. It is submitted that the trial court lost sight of these facts and committed an error in rejecting the application for restoration of the suit.

6. On the other hand, learned counsel for respondent submits that the learned trial court in absence of any material to show that the suit was withdrawn by playing fraud, was justified in rejecting the application. It is submitted that the withdrawal pursis was filed in view of amicable

settlement between the parties. It is submitted that no interference is thus called for in the impugned order.

7. It appears that notice of present petition was issued to Advocate Shri Rokade. However, he is reported to be no more. Admittedly, suit was filed through Advocate Samad Y. Ansari. It is not the case of the contesting respondents that no objection from Advocate Samad Ansari was obtained by Advocate Shri V.T. Rokade before filing his Vakalatnama. According to the contesting respondents, suit was withdrawn in view of amicable settlement between the parties. The respondent no.3 has admitted in his cross examination that the terms of settlement were reduced into writing. However, the respondents have not produced any such documents on record.

8. It would be, therefore, appropriate to set aside the order impugned and to restore the suit to its original file. In the result, following order is passed.

ORDER

1. Petition is allowed.
2. Order impugned dated 22.1.2014 is quashed and set aside.
3. The application filed by the petitioner i.e. C.M.A. No.67/1993 is allowed and consequently order dated 6.4.1993 passed by the trial court in R.C.S. No.59/1991 is set aside and the suit is restored on the file of the trial court.

4. As the suit is of the year 1991, the trial court shall endeavour to decide the suit as early as possible and in any case within one year from the date of receipt of copy of this order.

5. Needless to mention that the trial court shall decide the suit on its own merits.

(N.R. BORKAR, J.)