

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

Writ Petition No.2733 of 2021

Sunil Dhondu Shankhpal & others

vs.

Anil Balmukund Bharuka

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

Court's or Judge's Orders

Mr. P.B. Patil, Advocate for the Petitioners.

Mr. A.A. Naik a/w Mr. Rohan Deo, Advocates for the Respondent.

CORAM : MANISH PITALE, J.

DATE : 5th APRIL, 2022.

By this writ petition, the petitioners (original defendants) have challenged order dated 27/02/2020, passed by the Joint Civil Judge Junior Division, Malkapur (hereinafter referred to as 'the trial Court' for short), whereby an application filed by original defendant Nos.1 to 3 for framing additional issues at Exh.118, was disposed of by partly allowing the application and modifying the original Issue No.1. The petitioners are dissatisfied for the reason that, according to them, all the proposed additional issues proposed on their behalf ought to have been framed by the trial Court.

02] The sole respondent (original plaintiff) filed a suit against the petitioners herein for possession, compensation and other reliefs before the trial Court. The petitioners filed their written statement contesting the claim made on behalf of the respondent. The plaint was amended and so was the written statement. One of the contentious

issues raised on behalf of the rival parties concerned the question as to whether the tenancy would stand terminated on the demise of Pundlik Ninaji Shankhpal, who was the uncle of original defendant Nos.1 and 2. This was in the backdrop of the claim of the petitioners that the suit premises were taken on rent by their uncle for their use.

03] The trial Court framed original four issues on 18/09/2015. The petitioners (original defendant Nos.1 to 3) moved application for framing additional issues in the year 2019, claiming that certain crucial aspects of the matter were not covered by the original issues framed by the trial Court. The issues proposed on behalf of the petitioners were as follows :

- i) Whether the defendant proves that the suit shops were taken on rent by Pundlik Ninaji for the defendant Nos.1 and 2 being the members of his joint family?
- ii) Whether the plaintiff proves that the possession and occupation of the defendant Nos.1 and 2 over the suit shop premises is illegal or unauthorized?
- iii) Whether the plaintiff proves that the tenancy of Pundlik Ninaji was/is not heritable or transferable?

- iv) Whether the defendants prove that the decision/judgment/order passed by the Rent Controller, Malkapur in Revenue Case No.BRA/MKU/5/90-91 and No.BRA/MKU/8/90-91, dated 26/03/1999 becomes *res judicata* in the present suit?

04] The respondent opposed the aforesaid application, *inter alia*, on the ground that the said application is nothing but an another attempt on the part of the petitioners to delay the proceedings before the trial Court. By the impugned order, the trial Court partly allowed the application and only modified the original Issue No.1 and refused to frame all the issues as claimed by the petitioners. In the process of only partly allowing the application and modifying the original Issue No.1, the trial Court held that the proposed Issue Nos.1 to 3 would be covered under the modified Issue No.1 and that the proposed Issue No.4 did not deserve to be framed, because the question of *res judicata* was not material, as the earlier proceedings on which the petitioners sought to rely, were proceedings of a different nature contested before the Rent Controller.

05] Mr. Patil, learned Counsel appearing for the petitioners submitted that if all the proposed issues were not framed, there would be lack of clarity, leading to complications. It was submitted that the modified Issue No.1 was not enough to take care of the specific additional Issue Nos.1 to 3 proposed on behalf of the petitioners. It

was submitted that while issue pertaining to non-joinder of necessary party was indeed framed by the trial Court, the crucial issue pertaining to the question of *res judicata* was not framed, which was erroneous in the facts and circumstances of the present case.

06] On the other hand, Mr. Deo, learned Counsel appearing for the sole respondent submitted that the impugned order did not deserve interference, particularly because the proposed issues stood covered under the modified Issue No.1 and non-framing of issue on the question of *res judicata* was justified in the facts and circumstances of the present case. The learned Counsel expressed concern about the long pendency of the proceedings before the trial Court and a prayer was made for direction to the trial Court to dispose of the proceedings expeditiously.

07] This Court has considered the pleadings on record, including the amended plaint and the amended written statement. In the facts and circumstances of the present case, modification of Issue No.1 appears to be justified. The crux of the pleadings raised on behalf of the petitioners i.e. the original defendants before the trial Court, is that the premises were taken on rent for petitioner Nos.1 and 2, who were the nephews of Pundlik Ninaji Shankhpal. In this backdrop, it was contended on behalf of the petitioners that specific issue about the suit premises having been taken on rent for petitioner Nos.1 and 2 was required to be framed, on the basis of their claim that they all belong to a joint family.

08] A perusal of the proposed additional Issue Nos.1 to 3 shows that any finding on the same would necessarily depend upon the fundamental question as to whether the tenancy of said Pundlik Ninaji Shankhpal stood terminated on his demise. The proposed Issue No.1 to 3 are certainly covered under the said modified Issue No.1 framed by the trial Court by the impugned order. An answer to the said question would subsume within itself findings on the additional Issue Nos.1 to 3 proposed on behalf of the petitioners. To that extent, the trial Court is justified in only modifying Issue No.1 and refusing to frame proposed Issue Nos.1 to 3.

09] But, a perusal of the material placed on record, particularly the order passed by the Rent Controller in earlier proceedings initiated in the context of the same premises, would show that the question as to whether findings rendered by the Rent Controller would operate as *res judicata* or not, can certainly be said to be a point in issue, which would be debatable and findings thereon would have a material bearing on the proceedings pending before the trial Court. Instead of framing an issue in that context, the trial Court, at this stage itself, went into the question of *res judicata* and ended up giving a finding that the said issue did not deserve to be framed, because the proceedings before the Rent Control Authority were of a different nature and between the legal heirs of Durgabai Bharuka and Pundlik Ninaji Shankhapal. A finding is rendered in Paragraph 8 of the impugned order that the proceeding before the Rent Controller and the order passed thereon,

cannot be a bar to the present proceedings. This demonstrates the error committed by the trial Court by refusing to frame issue pertaining to *res judicata*, which was the proposed Issue No.4.

10] In view of the above, this Court is of the opinion that the writ petition deserves to be partly allowed.

11] Accordingly, the writ petition is partly allowed. The impugned order passed by the trial Court is modified to the extent that in addition to the re-casted Issue No.1 and Issue No.3-A framed on 27/02/2020, the following issue stands framed which reads as follows:

“Whether the defendants prove that the decision/judgment/order passed by the Rent Controller, Malkapur in Revenue Case No.BRA/MKU/5/90-91 and No.BRA/MKU/8/90-91, dated 26/03/1999 becomes *res judicata* in the present suit?”

12] The trial Court shall now proceed further in the matter by taking into consideration the said additional issue framed by this Court in terms of the application made on behalf of the petitioners. Considering the fact that the suit is pending before the trial Court from the year 2014, the proceedings therein are expedited and the trial Court is directed to ensure that the suit is disposed of within a period of nine months from today.

Signed by:SANDESH DAULATRAO
WAGHMARE
Private Secretary to the Hon'ble Judge
Signing Date:08.04.2022 14:58

JUDGE