

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

WRIT PETITION NO. 3257 OF 2021

Himmatlal S/o Ratanlal Jeswani,
Aged about 71 years, Occupation –
Properties of Radhaswami Medical
Agency, Presently R/o Marval
Azure, Flat No. 602, Building – A,
Sadesatra Nali, Hadapsar, Pune –
411 028

.... **PETITIONER**

// **VERSUS** //

Dr. Kishore s/o Hasanand Jeswani,
Aged about 58 years, Occupation –
Doctor, R/o Sindi Camp, Karanja,
Tq. Karanaja, Distt. Washim.

.... **RESPONDENT**

Shri M.G. Sarda, Advocate for the petitioner.
Shri A.D. Girdekar, Advocate for the respondent.

CORAM : ROHIT B. DEO, J.

DATED : 10.03.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioner is the defendant in Regular Civil Suit 17 of 2017 and Special Civil Suit 18 of 2014, which are instituted by the respondent for recovery of money.

3. The defendant preferred an application under Section 24 of the Code of Civil Procedure (the Code), which the learned District Judge has rejected by the order impugned dated 02.08.2021.

4. The application is predicated on the assertion that in both the suits, the defence is common, and therefore, the petitioner/defendant shall be prejudiced.

5. The fact that a common defence is taken, is not ground enough for transferring the suit, which is pending in the Court of Civil Judge, Junior Division, to the Court of Senior Division. I have noted from the perusal of the plaint, that while Special Civil Suit 18 of 2014 is filed to recover amount extended as a loan, the plaint averments in the other suit, are substantially different. The plaintiff claims that he was a guarantor to certain credit limits extended to the defendant and in order to avoid coercive action, the plaintiff was compelled to clear the liability of the Bank, and after making the payment to the Bank, the suit is instituted.

6. It is true that certain observations of the learned District Judge are not apt, in the sense that the learned District Judge clearly misdirected herself in assuming that it was a suit for partition instituted by the petitioner, which was the subject matter of the application. However, while the observation may be incorrect and indeed the reasons recorded appear to be incorrect, the conclusion is right, and I therefore, do not intend to interfere in writ jurisdiction.

7. The petition is dismissed.