

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 5403 OF 2019

Dr. Yashwant s/o Shankar Mashankar vs. Suresh w/o Shridhar Bhat
(Since deceased on 14/03/2003) through LR.

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

Court's or Judge's Orders.

Mr. Akshay Sudame, Advocate for petitioner.
Mr. N. R. Bhishikar, Advocate for respondent 1(A), 1(C)
and 1(D).
Mr. S. D. Dharaskar, Advocate for respondent No.2 (i)
and (ii).

CORAM : MANISH PITALE J.

DATE : 30/03/2022

By this petition, the petitioner has challenged order dated 02/05/2019, passed by the Court of District Judge-5 Amravati, (hereinafter referred to as the 'appellate Court') whereby an application at Exh.18, filed on behalf of the petitioner (original appellant) for remanding the matter back to the trial Court has been directed to be heard finally along with the main appeal.

2. Mr.Akshay Sudame, learned counsel for the appellant submitted that the appellant was constrained to file the aforesaid application at Exh.18 for the reason that an application filed before the trial

Court for referring a document to the handwriting expert at Exh.165 remained undecided and the suit filed by the appellant was dismissed. It was submitted that in these circumstances, the appellate Court ought to have remanded the matter back to the trial Court for a decision on Exh.165.

3. The said application was opposed on behalf of the respondent.

4. The appellate Court observed that the appeal itself was fixed for arguments when the aforesaid application at Exh.18 was moved on behalf of the petitioner. It was then observed that the appellate Court had sufficient powers to remand the matter to the trial Court, if such remand was warranted in the facts and circumstances of the case. Thereupon, the appellate Court passed the impugned order, simply stating that the application at Exh.18 shall be heard and decided finally along with main application.

5. Mr. Bhishikar, learned counsel appearing on behalf of the respondent 1(A), 1(C) and 1(D) and Mr.Dharaskar, learned counsel appearing on behalf of respondent No.2(i) and (ii), submit that there is no adverse order on the application Exh.18 moved on

behalf of the petitioner and that therefore, the writ petition ought to be dismissed.

6. In the facts and circumstances of the present case, this Court is of the opinion that since the appeal was fixed for arguments before the appellate Court, it was thought fit that the application at Exh.18 shall be considered at the time of final hearing.

7. The learned counsel for the petitioner sought to contend that the aforesaid application at Exh.18 could not have been equated with an application under Order 41 Rule 27 of the Code of Civil Procedure(CPC), which as per the settled position of law is required to be heard at the stage of final hearing of the appeal.

8. This Court is of the opinion that merely because the appellate Court has observed that the application at Exh.18 shall be heard and decided finally along with main appeal, it does not mean that the said application is necessarily treated as an application under Order 41 Rule 27 of the CPC. Even otherwise, the reasons stated in the application at Exh.18, while seeking remand to the trial Court can be placed before the appellate Court at the stage of

final hearing. No prejudice would be caused to the petitioner if the application at Exh.18 is pressed at the stage of final hearing of the appeal.

9. In fact, the appellate Court could take into consideration the entire material on record to examine whether the prayer made in the said application at Exh.18 for remanding the matter to the trial Court is warranted in the facts and circumstances of the present case. Therefore, it is evident that no prejudice has been caused to the petitioner by the impugned order. This Court is not expressing any opinion on the merits of the application at Exh.18, which the appellate Court will certainly consider at the stage of final hearing of the appeal.

10. In view of the above, this Court finds that no interference is warranted in the impugned order. Accordingly, the writ petition is dismissed. Since the appeal pertains to the year 2013, it would be appropriate that the appellate Court decides the appeal expeditiously and in any case within a period of six months from today.

JUDGE