

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3573 OF 2020

M/s Sabmiller India Limited
and another

.... Petitioners

Versus

Rahul Dilip Shah

.... Respondent

.....
Mr. N.K. Tungar, Advocate for the Petitioners
Mr. Amol S. Gandhi, Advocate for Respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th APRIL, 2023

ORDER :

1. Challenge in this petition is to the order passed by learned 10th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-56 in Special Civil Suit No. 504 of 2019.

2. The respondent/plaintiff filed suit for recovery of an amount of Rs.12,55,670/- along with interest. The defendants, though served with summons on 28/11/2018, failed to file written statement within stipulated time. On 26/02/2019, the trial Court passed 'No W.S.' order against the defendants. On 09/07/2019, the trial Court granted adjournment application of the defendants by imposing costs of Rs.500/-. This order is not complied by the defendants. Thereafter, application

exhibit-56 is filed for setting aside 'No W.S.' order dated 26/02/2019. The said application is rejected. Hence, the present petition.

3. Heard the learned advocate for the petitioners and the learned advocate for the respondent. Perused the grounds raised in the petition, documents placed on record, and the impugned order.

4. Admittedly, the suit filed by the plaintiff was initially registered as Special Civil Suit No.227 of 2018. Thereafter, it was re-registered as Commercial Suit No.124 of 2019, and now the suit is re-registered as Special Civil Suit No.504 of 2019.

5. The trial Court has rejected the application of the defendants for setting aside 'No W.S.' order by relying on ***Ms. SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Private Ltd. And others; 2019 (12) SCC 210***, holding that the present suit falls under the category (vi) – construction and infrastructure contracts, as defined in Section 2 of the Commercial Courts Act, 2015. The trial Court has accepted the argument of plaintiff that Section 16 of the Commercial Courts Act, 2015 and Schedule annexed with it, is

applicable to the suit as the suit pertains to commercial dispute.

6. The trial Court has erred in placing reliance on ratio in *Ms. SCG Contracts India Pvt. Ltd.* (supra), and the provisions of Commercial Courts Act, as admittedly the present suit is a Special Civil Suit and not a Commercial Suit. In that view of the matter, the entire approach on the part of trial Court by rejecting the application is erroneous, and the impugned order cannot be sustained.

7. It is a settled legal position that the rules of procedure are the handmaid of justice and procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. They cannot be used to prevent a party from defending the suit and/or putting up his case. The procedural rules are directory and not mandatory.

8. In the light of aforesaid, the trial Court has erred in rejecting the application filed by the petitioners. The impugned order is therefore cannot be sustained in the facts of the case. Hence, the following order:-

ORDER

(I) The writ petition is allowed.

- (II) The impugned order passed by learned 10th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-56 in Special Civil Suit No. 504 of 2019 dated 30.01.2020 is quashed and set aside.
- (III) The application Exhibit-56 is allowed.
- (IV) The respondent is entitled to withdraw costs of Rs.20,000/-, which the petitioners have already deposited in this Court.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane