

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9088 OF 2023

**KAILAS BALASAHEB GADILKAR
VERSUS
DILIP NAMDEORAO LONDHE**

...

Advocate for Petitioner : Mr. Ajit M. Gholap
Advocate for Respondent : Mr. Amarsinha D. Sonkawade

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 31st JULY, 2023

PER COURT :

1. By this petition filed under Article 227 of the Constitution of India, petitioner challenges order dated 14/02/2023, passed by learned 3rd Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-27 in Regular Civil Suit No.196/2021, thereby rejecting application filed by the petitioner/defendant for framing additional issues.

2. Respondent/plaintiff filed the suit for recovery of amount. Defendant appeared and filed written statement thereby raising objection that he has purchased the business of partnership firm and therefore, plaintiff cannot seek recovery in his individual capacity. Trial Court on the basis of pleadings of the parties, framed issues at Exhibit-15 as follows:-

"1] Whether plaintiff proves that defendant has committed breach of agreement dated 27/11/2019?"

- 2] *Whether plaintiff is entitled for recovery of Rs.40,69,000/- from defendant as alleged?*
- 3] *Whether plaintiff is entitled for interest @ 12% p.a. from date 01/09/2021 till realization of entire amount Rs.40,69,000/- as alleged?*
- 4] *Whether suit is bad for non-joinder of necessary party?*
- 5] *What order and decree?"*

Defendant, therefore, filed application Exhibit-27 requesting the Trial Court to frame following additional issues:-

- "1. *Does plaintiff prove that he is a partner in M/s. Shree Samarth Multiservices Firm and he has right to file suit for or on behalf of partnership firm?*
2. *Whether suit property in respect of which plaintiff is claiming relief is properly described?*
3. *Does plaintiff prove that a partnership firm M/s Shree Samarth Multi Services is still in service?"*

3. The said application was opposed by the plaintiff by filing detail say. Trial Court has rejected the application. Hence, the present petition.

4. Heard learned advocate for petitioner and learned advocate for respondent. Perused the memo of writ petition, annexures thereto and the impugned order.

5. On going through the pleadings of the parties, it is clear that the issue in respect of 'whether plaintiff proves that he is partner in M/s. Shree Samarth Multiservices firm and he has right to file suit for or on behalf of partnership firm' is necessary, as there

are specific averments in the written statement filed by the defendant in that behalf. Similarly, the issue in respect of 'whether the partnership firm is still in existence', also appears to be proper from the pleadings of the parties.

6. Learned advocate for petitioner has fairly conceded that it is not necessary to frame issue No.2.

7. Having heard learned advocates for the parties and after perusal of the pleadings, this Court is of the view that the impugned order cannot be sustained, as it is passed ignoring the relevant rival pleadings, made by the defendant in written statement.

8. In the result, following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 14/02/2023, passed by learned 3rd Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-27 in Regular Civil Suit No.196/2021, is quashed and set aside.
- (III) Application Exhibit-27 is allowed to the extent of proposed issue Nos.1 and 3.

(NITIN B. SURYAWANSHI, J.)