

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

WRIT PETITION NO. 13570 OF 2023

Faruk s/o Imamsab Umapure

...Petitioner

Versus

1. Kalpana w/o Shivajirao Jadhav
2. Mainoddin s/o Immoddin Umapure
3. Husain s/o Gulab Saudagar

...Respondents

...

Advocate for Petitioner : Mr. Shailendra S. Gangakhedkar

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 4th NOVEMBER 2023

PER COURT :

Heard.

1. By the impugned order, learned Principal District Judge, Osmanabad rejected Civil Miscellaneous Application No.126/2023 submitted by the petitioner seeking transfer of the proceeding under Section 24 of the Civil Procedure Code. The petitioner sought transfer of Regular Civil Suit No.83/2012 filed by him before the Court of Civil Judge, Senior Division, Omerga to any other Court castigating the the Presiding Officer for bias and unfair treatment.

2. The respondents have filed RCS No.83/2012 for perpetual injunction before the Civil Judge, Senior Division, Omerga. The petitioner appeared in the matter and contested it by filing written statement with the counter claim of injunction. When

the suit was at the stage of final hearing, CMA No.126/2023 was moved under Section 24 of the CPC to the Principal District Judge, seeking transfer of the proceeding.

3. It is the case of the petitioner that his evidence was foreclosed on 16.01.2023 when the report of the witness summons was awaited. Without extending opportunity, the matter was posted for the argument. But the respondents were permitted to file document on 13.06.2023. It is further stated that on 24.07.2023, the lawyer representing the petitioner was absent and busy before the other Court. The petitioner was present. That time, the Presiding Officer passed remarks to the petitioner that “you sell your property and raise dispute”. The petitioner has stated to have lost faith in the Presiding Officer and hope for getting impartial justice.

4. The application submitted by the petitioner was opposed by the respondents by filing Say at Exhibit-10. All the allegations in the application were denied. The learned District Judge went through the record and held that there is no haste committed by the Presiding Officer and it is infact the petitioner who delayed the proceeding. It is further found that no reason is surfacing to cause prejudice to the petitioner. The application therefore, is rejected.

5. The learned Counsel for the petitioner submits that the learned Principal

District Judge overlooked the serious allegations stated in the application casting aspersions on the petitioner by the Presiding Officer. The over all conduct of the Presiding Officer in dealing with the matter has not been appreciated properly. He submits that his client has been met with an unfair treatment and due opportunity of hearing has not extended. It is submitted that approach of the Presiding Officer is of bias and impression is creating about likelihood of bias. He would submit that there is apprehension in the mind of his client about the Presiding Officer which is detrimental image of judicial process. He further submits that the Principal District Judge overlooked the conduct of the Presiding Officer in showing undue favours to the opponent.

6. The learned Counsel for the petitioner has placed on record affidavit sworn on 03.11.2023 by his client before notary. It is disclosed that on 24.07.2023 objectionable remarks are passed by the Presiding Officer to his client and in support of the incident, Roznama has also been annexed. He has placed reliance on following judgments :

- (i) C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee, reported in (1995) 5 SCC 457.
- (ii) Subrota Roy Sahara Vs. Union of India, reported in 2014(8) SCC 470.
- (iii) P.D. Dinkaran (1) Vs. Judges Enquiry Committee, reported in 2011 (8) SCC 380.

7. The learned Principal District Judge has considered the written argument and the submission of the lawyers of the respective parties through Video Conferencing. The Roznama of the proceeding has been considered by the learned District Judge. Nothing objectionable is noticed in conducting the proceeding by the Presiding Officer. The learned District Judge has rightly concluded that there is no undue haste and opportunity of hearing is adequately extended to the petitioner. This conclusion is plausible and no fault can be found in coming to the conclusions.

8. The incident of 24.07.2023 which is stated to have occurred casting aspersions by the Presiding Officer on the petitioner is of trifle in nature. It appears that the petitioner has unnecessarily made capital of the so called utterances of the Presiding Officer. The affidavit which is for the first time presented before this Court was not before the Principal District Judge while dealing with application for transfer. There is no occasion to test the veracity of the alleged utterances. Though, learned District Judge did not mention and deal with the aspersions cast by the Presiding Officer on 24.07.2023, that would not cause prejudice to the petitioner. I find no gravity to take cognizance of the incident cited by the petitioner.

9. The transfer of the proceeding under Section 24 of CPC on the ground of imputation of the an unfair treatment or bias or likelihood of bias is a serious matter. Unless there is an adequate material to support the allegation, the learned District

Judge is justified in refusing the transfer. The powers under Section 24 of the CPC cannot be invoked just for asking. In the absence of adequate material supporting the allegations if the proceedings are transferred that would offend the honest judicial officers dealing with the matter. It has to be kept in mind that the judicial officer against whom the allegations for transfer are made, would not in all matters get opportunity to explain the conduct or justify the particular course of interaction with the parties or the advocates. If for unsupported allegations, the proceedings are transferred that is showing disrespect to the competency and self-esteem of the Presiding Officer.

10. Though the learned Counsel for the petitioner cited three judgments of the Supreme Court, no specific paragraphs from the judgments are shown. I have gone through the judgments cited by the learned Counsel for the petitioner. With due respect to the principles laid down therein, I find that it is not a fit case to interfere with the impugned order. The writ petition is dismissed.

[SHAILESH P. BRAHME, J.]

Najeed.