

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1876 OF 2023

Ramchandra Ajitsinh Patankar & ors. .Petitioners

Vs.

Vijay Baburao Bakare & ors. .Respondents

**WITH
WRIT PETITION NO. 1877 OF 2023**

Ramchandra Ajitsinh Patankar .Petitioner

Vs.

Kiran Prakash Patil & ors. .Respondents

Mr. Yuvraj Narvankar, Advocate, for the Petitioners
Mr. Kuldeep Nikam, Advocate, for the Respondents

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 18.7.2023

P. C.

. The challenge in the Petitions is to the order dated 27.09.2022 passed by learned C.J.S.D, Kolhapur granting leave to the Respondents to institute the suit in an application filed under Section 91(1)(b) and Order I, Rule 8(2) of the Code of Civil Procedure (for short 'CPC').

2. Heard learned counsel for the Petitioners and learned counsel for the Respondents.

3. Learned counsel for the Petitioners points out that the suit in question is sought to be instituted at the instance of one Mr. Vijay Baburao Bakare, who having failed in his attempt to intervene in the application filed under 41D of the Bombay Public Trusts Act now seeks to challenge the change of the tenure of the suit property from Class 'B' to Class 'C' tenure. He would further submit that the application filed under Section 91(1)(b) contemplates affecting of public interest and is confined only to cases where there is public nuisance or other wrongful acts even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful acts, whereas, an application under Order I, Rule 8(2) requires involvement of a personal interest and as such, the provisions are contrary to each other and thus, cannot form part of composite application. He has further pointed out that the trial Court has failed to pass a reasoned order and the impugned order has been passed in a mechanical manner. He would further point out that while granting leave to institute suit under Section 91(1)(b), it is expected of the trial Court to apply it's mind judiciously.

4. Learned counsel for the Respondents in support of his

contentions relied upon a decision of the Rajasthan High Court in the case of *Kanti Lal Patel & Ors. Vs. Naresh Taldar & Anr.*, reported in *2014(1) RLW 704(Raj.)*, wherein the Court has held that while granting leave in exercise of powers under Section 91(1) of the CPC, the Court is required to record its reasons for granting such leave. He would contend that it is open for the Petitioners to seek revocation of leave and as such, writ petition at the instance of the Petitioners is not maintainable. He relied upon the decision of this Court in the case of *Omkar Pandit Bankar Vs. Ashok Laxman Jadhav and Others*, reported in *2023 SCC OnLine Bom 338*. It is pointed out that the provisions of Sections 91 and 92 of the CPC are pari materia and this Court has considered the decision of the Apex Court and held that it is open for the Defendants to file an application for revocation of the leave which can be considered on merits and in accordance with law.

5. Considered the submissions.

6. As regards the contention that the application has been filed under Section 91(1)(b) and under Order I, Rule 8(2) of the CPC, which according to the learned counsel for the

Petitioners, cannot form part of composite application, mere heading of the application is not determinative of the provision. The averments made therein have to be perused to determine its true nature. Viewed from that aspect, it can be seen from the averments made in the application that the same is an application filed under Section 91(1)(b) of the CPC.

7. If the impugned order dated 29.07.2022 is perused, the Civil Court has in a mechanical manner allowed the application. The order simplicitor states that “the application is allowed” and the same is an unreasoned, non-speaking order and does not demonstrate application of judicial mind.

8. Considered the decision of the Rajasthan High Court as well as this Court, it is clear that leave which has to be granted by the trial Court under Section 91(1)(b) of the CPC has to be a well reasoned order indicating the application of mind and the reasons for grant of such leave. The Apex Court in its Judgment in the case of *Municipal Council, Jalna through its Chief Officer Vs. Eknath S/o. Narayan Shankar Pelli*, reported in (2000) 1 Bom CR 888, which has been referred to by this Court in the case of *Omkar Pandit Bankar (Supra)*, held that it is open for the

Defendants to file an application for revocation of the leave which can be considered on merits and in accordance with law. The Apex Court has held that when there is absolutely no reason recorded before granting leave under Section 91 of the CPC to institute the suit, the order passed is bad-in-law and not maintainable.

9. Considering the decisions which have been referred to above coupled with the fact that the order is non-reasoned and non-speaking order, in my opinion, the matter is required to be remanded to the Civil Court and in the interest of both the parties, the proposed Defendants should also be heard so that while exercising powers by the trial Court it can be pointed out by the proposed Defendants as to why leave ought not to be granted.

10. In view thereof, the impugned order dated 29.07.2022 is hereby quashed & set aside and the matters are remanded to the C. J. S. D., Kolhapur to decide afresh the application seeking leave under the provisions of Section 91(1) (b) of the CPC. The trial Court to hear the Petitioners as well as Respondents and to pass a speaking reasoned order.

11. The Petitions stand allowed in the above terms.

12. Needless to clarify that rights & contentions of the parties are expressly kept open and the trial Court to decide the application uninfluenced by the observations made in this order.

(SHARMILA U. DESHMUKH, J.)