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

WRIT PETITION NO.7257 OF 2023

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Sadashiv Chintamani Aaglave

Through Power of Attorney Holder

Meena Sadashiv Aaglave

... Petitioner

V/s.

Sunil Babubhai Warlekar & Ors.

... Respondents

Mr. Sumedh S Modak, for the Petitioner.

Mr. Sandip D Shinde, for Respondent Nos.5 & 6.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 31, 2023

P.C.:

1. By this petition under Article 227 of the Constitution of India petitioner is challenging order dated 24 March 2023 rejecting the application under Order 6, Rule 16 of the Code of Civil Procedure, 1908 to strike out of part of the pleading avered in paragraph Nos. 2 to 4 and prayer clauses (10-a) and (10-d) of the plaint.

2. The Trial Court rejected the application, observing that at this stage, it is not possible conclusively determine that whether contents of the pleading as sought to be deleted, scandalous, frivolous or vexatious.

3. Parameters of powers exercising under Order 6, Rule 16 of CPC have been delineated by three Judges Bench of the Apex

Court, in the case of **Sathi Vijay Kumar vs Tota Singh & Ors**, reported in (2006) 13 SCC 353. The parameters are laid down in paragraph 28, which reads as under:

“**28.** Bare reading of Rule 16 of Order 6 makes it clear that the Court may order striking off pleadings in the following circumstances:

- (i) Where such pleading is unnecessary, scandalous, frivolous or vexatious; or
- (b) Where such pleading tends to prejudice, embarrass or delay fair trial of the suit; or
- (c) Where such pleading is otherwise an abuse of the process of the Court.”

4. In paragraph 33, the Apex Court has held as under:

“**33.** At the same time, however, it cannot be overlooked that normally a Court cannot direct parties as to how they should prepare their pleadings. If the parties have not offended the rules of pleadings by making averments or raising arguable issues, the Court would not order striking out pleadings. The power to strike out pleadings is extraordinary in nature and must be exercised by the Court sparingly and with extreme care, caution and circumspection [vide *Roop Lal v. Nachhatar Singh*, (1982) 3 SCC 487 : AIR 1982 SC 1559; *K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573 : AIR 1998 SC 1297; *United Bank of India v. Naresh Kumar*, (1996) 6 SCC 660 : AIR 1997 SC 3]”

5. On scrutiny of plaint, in the light of law laid down by the Apex Court, in my opinion, at this stage, the issues raised by the defendant No.3 are arguable issues which need to be considered by the Trial Court at the hearing of the suit. As held by the Apex Court, power to strike out pleadings being extraordinary in nature such power needs to be used sparingly and with extreme care, caution and circumspection.

6. On overall reading of the plaint, I am of the opinion that the grievances raised by defendant No.2 need to be adjudicated at appropriate stage by the Trial Court including the contention of the petitioner with the prayer clause including declaration as regards notice dated 27 May 2022. Therefore, no interference at this stage is called for; however, the Trial Court shall adjudicate all the issues raised by the petitioner in the present petition at the appropriate stage of the suit.

7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)