



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9766 OF 2023

M/S. Sushil Automobiles

Thr.Partner

Bhikoba Sakham Dhadge

...Petitioner

Versus

M/S Sushil Automobiles

Thr. Partner

Bhagwan Sakham Dhadge And Ors

...Respondents

Mr. Vaibhav R. Gaikwad for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : AUGUST 11, 2023

P. C. :

1. Heard,

2. The challenge in the Petition is to the order dated 6th June, 2023 rejecting the Petitioner's Application seeking permission to abandon part of the claim and to retain certain reliefs.

3. By order passed below Exhibit-41 and 52, the Trial Court rejected the Petitioner's Application seeking amendment to abandon part of the claim and directed the Petitioner to comply with the order below

Exhibit-36 directing the Plaintiff to value the property and pay the Court fees accordingly

4. Mr. Gaikwad, learned counsel appearing for the Petitioner submits that the suit being Regular Civil Suit No. 973 of 2016 was instituted by the partners of the Partnership firm Sushil Automobiles against the other partners. He would further submit that the suit sought a declaration as regards the right of the Petitioner in the properties of the Petitioner firm and for certain other mandatory injunction. He would further submit that in this proceeding an application came to be filed under the provisions of Order 7 Rule 11 of the CPC by the Defendant for proper valuation of the Court fees. He would further submit that, subsequently the Petitioners filed an Application under the provisions of Order 6 Rule 17 of the CPC seeking amendment of the plaint to delete certain reliefs and to retain relief only as regards the production of the entire account of the firm since the year 2016 and defreezing of the bank account. He would further submit that the Trial Court has rejected the Application seeking amendment on the ground that overall impact of the prayers of which withdrawal is sought is required to be considered while granting permission to withdraw part of the reliefs.

5. *Per contra* learned counsel appearing for the Respondents submits that the Petitioner having given up the relief of declaration of his share

and right in the partnership firm, the relief of mandatory injunction would not survive.

6. Considered the submissions.

7. Initially the suit filed sought the declaration as to the share of the Petitioner in the properties of partnership firm and mandatory injunction as regards defreezing of the accounts and production of the entire account of the firm since the year 2016. Subsequently, an application has been moved seeking to delete all prayers except prayer clause (d) and (p) which are as regards the defreezing of bank account and direction to produce the accounts since the years 2016. The provisions of Order 23 Rule 1 of the CPC provides that at any time after the institution of the suit, the Plaintiff may as against or any of the Defendants abandon his suit or abandon a part of his claim. In the present case the Plaintiff-Petitioner is not seeking any liberty to institute any fresh proceeding. In that view of the matter, considering the provisions of order 23 Rule 1 of the CPC there is no impediment to permit the Plaintiff to withdraw or abandon part of claim which has been done in the present case. As far as the contention of learned counsel appearing for the Respondent that in the absence of any declaration of right, no mandatory injunction can be granted the same is the matter which will have to be decided after the evidence has been led. In my opinion, there is no reason to consider the impact of the withdrawal

of some of the relief on the other reliefs. It is entitlement of the Plaintiff who is the *dominus litus* to withdraw or abandon part of his claim and face consequences subsequently, if the same arises.

8. By common order, the Plaintiff was granted a period of 30 days to comply with the order for valuation. In view of the above the impugned order dated 6th June, 2023 is quashed and set aside. As a result, the Application filed below Exhibit-41 stands allowed.

9. In view of the fact that the plaintiff has now been permitted to abandon the part of his claim, the issue will have to be considered as regards the valuation subsequent to the amendment being carried out by the Petitioner. Writ Petition stands allowed in above terms.

(SHARMILA U. DESHMUKH, J.)