



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

CIVIL REVISION APPLICATION NO.419 OF 2023

Rajesh Dayaldas Narwani

..... Applicant

Vs.

Kanayalal D. Bablani

..... Respondent

Mr.Ashok M Saraogi for the Applicant.

Mr. Abhishek Matkar for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 25th OCTOBER 2023.

P. C.

1. By this Revision Application, the challenge is to the order dated 29/4/2023 rejecting the Applicant's Application seeking dismissal of the Suit for the reasons mentioned in the Application filed below Exhibit 24 and for setting aside the no cross order passed on the same day.

2. Mr. Saraogi, learned Advocate for the Applicant points out order of this Court dated 28/11/2007 and submits that the Plaintiff has been adjudged an insolvent and as such it is the Official Assignee, who is entitled to institute proceedings in respect of property of the Plaintiff. He would further submit that the Application was dismissed as not maintainable and on the same day

the evidence of the Plaintiff was closed without permitting cross examination by the Applicant.

3. *Per contra*, learned Advocate for Respondent submits that the Application though titled as an Application for stay of the proceedings for joining the Registrar of Insolvency Department as party to the present Suit sought the relief of dismissal of the Suit and as such has been rightly rejected as not maintainable.

4. The Application filed below Exhibit 24 sought dismissal of the Suit on the ground that there has been suppression of the fact by the Plaintiff that property has been transferred to third party and on the ground that an Official Assignee has been appointed in the insolvency proceedings in the year 2007 itself. Upon query by this Court as regards the diverse grounds on which the Application was filed, Mr. Saraogi, learned Advocate would submit that he would only press the issue as regards the appointment of Official Assignee. The Application in question seeks relief of dismissal of the Suit and as such has been rightly held as not maintainable. In event, the contention of the applicant is

that due to the appointment of Official Assignee the Plaintiff is no longer entitled to institute/continue the proceedings, the proper procedure would be to file an Application for impleading Official Assignee as party to the proceedings. This would also be necessitated by the fact that learned Advocate for the Plaintiff has disputed that the Plaintiff has been adjudged an insolvent and Official Assignee has been appointed in respect of his property.

5. Considering the dispute arising in the present case, it would be in the interest of justice if the Application is disposed of with liberty to the Applicant to file a fresh Application for impleading Official Assignee as party to the proceedings by impleading the Official Assignee as the proposed Respondent in the Application. This would clear the scenario as to whether the property of the Plaintiff is vested in the Official Assignee pursuant to the insolvency proceedings which is stated to have been commenced in the year 2007. Let the Application for impleading the Official Assignee as party to the proceedings be filed within a period of two weeks from today. Reply, if any, be filed to it within one week thereafter. The trial Court to decide the Application on

or before 30/11/2023.

6. Considering that the passing of the no cross order would result in manifest injustice to the Applicant, who is pursuing the issue as regards the maintainability of the proceedings at the instance of the Plaintiff, in the interest of justice, the impugned order dated 29/4/2023 closing the cross examination is hereby set aside.

7. The Revision Application is disposed of in the above terms.

SHARMILA U. DESHMUKH, J.