

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

**APPEAL FROM ORDER NO. 174 OF 2023
WITH
INTERIM APPLICATION NO. 2204 OF 2023**

Sharnappa Sidhramappa Bake & Another	...Appellants
Versus	
Shri. Siddheshwar Devasthan Solapur	
Thr. it's Secretary, Somshekhar M. Deshmukh	...Respondent

...
Mr. Prasad P. Kulkarni for the Appellant.
...

CORAM: SANDEEP V. MARNE, J.

DATE : 29 AUGUST 2023.

ORAL ORDER:

The appeal is filed challenging judgment and order dated 17 July 2018 passed by District Judge, Solapur by which appeal is allowed and the judgment and order passed by the Trial Court in Regular Civil Suit No.665 of 2007 is set aside and suit is remanded for retrial by adding Solapur Municipal Corporation as defendant in the counter claim. The parties were directed to appear before the Trial Court on 31 August 2018.

2. Apart from not challenging judgment and order of the Trial Court remanding the suit for considerable period of time, Appellant-

Plaintiff appeared before Trial Court on 31 August 2018 and participated in the proceedings before it. After delay of almost 05 long years, the present appeal is filed. Considering the fact that the Appellant-Plaintiff participated in the remanded suit in pursuance of the impugned judgment and order dated 17 July 2018, the delay in filing the present appeal cannot be ignored.

3. Even though delay in present appeal cannot be ignored I have nevertheless heard the learned counsel appearing for the appellant. It appears that there is dispute about ownership of the property on which the suit shop is situated. In the earlier round of litigation in R.C.S. No.33 of 1988 notice was issued by the Solapur Municipal Corporation for eviction of Appellant-Plaintiff on the ground that the said suit shop was causing nuisance to the students nearby the shop. Suit was decreed on 29 January 1998 restraining Municipal Corporation from removing the suit shop of the Appellant-Plaintiff.

4. The cause of action for filing R.C.S. No.665 of 2007 is the notice issued by the defendant Siddheshwar Devasthan Trust, Solapur seeking Plaintiff's eviction. The defendant Devasthan filed a counter claim for recovery of possession of the suit shop from Plaintiff. By it's judgment and order dated 12 July 2016, the Trial Court has decreed Plaintiff's suit and has rejected the defendant's counter claim. One of the reasons recorded for rejection of counter claim was necessity of presence of Solapur Municipal Corporation for effectively deciding the counter claim.

5. The learned counsel appearing for Appellant would contend that in a lis primarily between Plaintiff and Defendant Devasthan, the Solapur Municipal Corporation cannot be added as party, that too only in the counter claim. This submission may appear to be attractive in the first blush, however on a deeper scrutiny of the controversy the order passed by the Trial Court directing impleadment of Solapur Municipal Corporation as party to the counter claim does not appear to be erroneous. There appears to be some dispute between Solapur Municipal Corporation and Devasthan about ownership of the land. The Trial Court has held that only the Solapur Municipal Corporation has right to take action against Plaintiff for his removal.

6. While rejecting counter claim filed by defendant Devasthan, the only reason recorded by the Trial Court is absence of Solapur Municipal Corporation as Defendant therein.

7. If Solapur Municipal Corporation is kept out of dispute between the Plaintiff and Defendant, the Defendant will have to file a separate suit against Solapur Municipal Corporation for recovery of possession which cannot be adjudicated in absence of Plaintiff. Thus, right of Plaintiff to continue to possess the suit shop cannot be effectively adjudicated unless all the parties are present in a proceeding. In that view of the matter for effective adjudication of the entire suit, presence of Solapur Municipal Corporation in the counter claim filed by the Defendant appears to be necessary.

8. Thus, even on merit the Appellant has not made out any case to interfere in the order passed by the Trial Court. Appeal and Interim Application are dismissed without any order as costs. All contentions of the parties are kept open.

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SANDEEP V. MARNE, J.