

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 3506 of 2022

Ashok Shyamsudar Dulhani

Versus

Sundarlal Jaymitmal Vardhani and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri G.L.Agrawal, Advocate for the petitioner.

Shri R.T.Anthony, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 16th JUNE, 2023.

Heard.

2. The order dated 12th January, 2022 passed by the District Judge in Misc. Civil Appeal No. 8 of 2021 confirming the order dated 9th April, 2019 passed by the 6th Joint Civil Judge (Senior Division), Amravati, rejecting the application Exh.45 moved by the petitioner under Order 9 Rule 9 of Code of Civil Procedure, praying for dismissal of the suit, is the subject matter of the present writ petition.

3. It is the case of the petitioner that, the earlier suit namely Regular Civil Suit No. 93 of 2007 was dismissed in default on 19th December, 2011. It is submitted that respondent Sunderdas was the plaintiff in the said suit. It is further submitted that after the dismissal of the said suit filed for permanent injunction,

the another suit came to be filed vide Regular Civil Suit No. 424 of 2016 in which the respondent Sunderdas was the plaintiff along with respondent nos. 2 and 3 and the petitioner is the defendant no.3. The suit was for declaration of mandatory injunction and possession. Since the subsequent suit was based on same cause of action and as the earlier suit was dismissed in default, an application under Order 9 Rule 9 was moved by the petitioner-defendant no.3 for dismissal of the suit on the above referred ground.

4. The learned trial Court rejected the said application on the ground that Order 9 Rule 9 of CPC will not apply to the present case. The said order dated 9th April, 2014 was confirmed by the Appellate Court vide impugned judgment and order dated 12th January, 2022.

5. Both the Courts have held that the cause of action in both the matters i.e. Regular Civil Suit No. 93 of 2007 and Regular Civil Suit No. 424 of 2016 are different and thus Order IX Rule 9 of CPC does not attract to the present case.

6. On bare perusal of the record, it is evident that the respondent no.1 Suderdas filed a suit against the Narumal Sindhi and State of Maharashtra for declaration and injunction whereas, in the subsequent

suit in addition to Sudardas, the respondent nos. 2 and 3 are the plaintiff. At the same time Narumal Sindhi and the defendant nos. 2 to 5 are the defendants. The defendant nos. 2 to 5 were not party to the earlier suit. In the subsequent suit, the cause of action is based on subsequent events i.e. after dismissal of the earlier suit.

7. Thus, considering that the cause of action in both the matters and also the parties to both the suits are different, I do not find any illegality committed by both the Courts below. In the circumstances, the writ petition is dismissed.

[ANIL S. KILOR, J.]