



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6592 OF 2018

(Kanhaiyyalal s/o Sumramalji Kalra Vs. Pradeep Singh s/o Sundarlal Chouhan and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. P. A. Abhyankar, Advocate for Petitioner.
Mr. P. K. Mishra, Advocate for Respondent No.1.
Mr. A. Shelat, Advocate for Respondent Nos.6 & 7.

CORAM: ANIL S KILOR, J.

DATE: 28th AUGUST, 2023.

The order below Exh.110 dated 05.12.2017 passed by the 7th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.1248/2009 rejecting the application for deletion, striking out of the name of defendant No.1 from the array of defendants came to be rejected and the same is the subject matter of the present writ petition.

2. In a suit for recovery of possession against the defendant Nos.1 and 2, the plaintiff moved an application for deletion of defendant No.1 in view of the mutual settlement in between the plaintiff and defendant No.1.

3. The petitioner in the present writ petition is the defendant No.2 in the said suit filed by the respondent No.1 Pradeep Singh s/o Sundarlal Chouhan. The learned Trial Court while rejecting the said application has recorded the reasons in para 10 which read thus:

10. It is the suit for possession and damages

filed against both the defendants jointly. It is suit for recovery of possession and damages for Rs. 5,000/- per day from filing of suit till realization. Here, the plaintiffs submit for settlement of claim against the defendant No.1 alone. What type of settlement was effected by the party, how much damages were paid while such settlement and how the question of delivery of vacant possession of suit premises is to be resolved are all the points which are not explained in detail in the present application filed on record. Moreover, what would be the remaining claim remained against the defendant No.2 and how it is to be proceed further is not at all explained by the plaintiff here therefore, unless there is clarity about terms settled with defendant No.1, giving up of part of the claim by plaintiff for said defendant No.1 and the nature of remaining claim to be proceeded against defendant No.2 is not made clear and therefore, without having its clarity, the conclusion as such defendant No.1 is improperly joined in the present suit cannot be drawn. The terms are not appearing properly to be called as just for striking out the name of such defendant No.1. Therefore, his name cannot be struck of. Accordingly, point No.1 is answered in the negative and for point No.2, following order is passed.

ORDER

1. *Application is rejected.*
2. *Costs in cause.*
3. *Suit to proceed.*

4. Admittedly, the prayer made by the plaintiff was rejected vide impugned order and the present petition has been filed by the defendant No.2 and not by the plaintiff.

5. In the circumstances, I am of the opinion that the petitioner cannot be termed as an aggrieved person to raise the grievance against the rejection of prayer made by the plaintiff, by filing the present writ petition. Accordingly, I am of the considered view that the present writ petition is not maintainable at the instance of the petitioner.

6. As far as the second prayer clause is concerned there is no application filed by the petitioner before the learned Trial Court making the said prayer and nothing has been pointed out by the learned counsel for the petitioner that such prayer was made and it was rejected. In the circumstances, the petitioner cannot be permitted to make such prayer first time before this court. Accordingly the writ petition is dismissed.

(ANIL S. KILOR, J.)