



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1734 OF 2023

GANESH KISANRAO MORE
VERSUS
SUBHADRABAI KISANRAO MORE AND OTHERS

Mr. R. R. Kakani, Advocate h/f Mr. J. M. Murkute, Advocate for the
petitioner
Mr. B. S. Shinde, Advocate for respondent Nos.2 and 3.

CORAM : R. M. JOSHI, J.

DATE : 14th JUNE, 2024

PER COURT :-

1. Heard. By consent of both sides, heard finally at the stage of admission.
2. This petition takes exception to the order dated 20th July, 2022 passed by the Civil Judge Junior Division, Aurangabad below Exhibit 18 in R.C.S. No. 262 of 2021.
3. Record indicates that the plaintiff filed suit bearing No. 262 of 2021. Thereafter the compromise pursis came to be filed on behalf of the plaintiff and defendant Nos. 1 to 4. The said compromise pursis was read and recorded by the learned Trial Court and matter was kept for passing necessary order below Exhibit 1. In the meantime an application vide Exhibit 18 was filed raising objection with regard to the compromise

pusis by Advocate for defendant Nos. 2 to 4. On the said application impugned order came to be passed whereby the learned Trial Court has directed the defendant Nos. 2 to 4 to lead the evidence to substantiate their objection.

4. Learned counsel for the petitioner submits that in view of the provisions of Order XXIII Rule 3 of the Code of the Civil Procedure the learned Judge is under obligation to pass decree of compromise even if he merely reads and records the compromise pusris. It is his further submission that without any prayer being made by the defendants to lead evidence learned Trial Court has directed these defendants to lead evidence which is erroneous.

5. Learned counsel for the defendants supported impugned order.

6. The record indicates that in the suit filed by the petitioner compromise pusris was filed below Exhibit 9. The said pusris was presented before the Court and as per the order passed by the Trial Court the plaintiff and defendant Nos. 1 to 4 along with their respective counsels were present. It, however, reveals from record that the Court has merely read and recorded the said compromise pusris and has not recorded its satisfaction that the compromise is lawful and acceptable.

7. Before any such satisfaction could be recorded by the learned Trial Court application was filed on behalf of defendant Nos. 2 to 4 raising objection with regard to the said compromise pursis terms. Once such objection is raised it is obligatory for the Court to ascertain and decide the said objection by calling upon the party to prove the same. In the light of this, when the Court directs these defendants to lead evidence to substantiate their objection, no fault can be found with such order. In such circumstances, petitioner has failed to make out any case. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp