



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

16 WRIT PETITION NO. 3078 of 2022

Vitthal Fakkad Raut

....Petitioner

VERSUS

Himmatkha Ahmedkha Pathan

.....Respondent

Mr. K. N. Shermale, Advocate for the Petitioner

Mr. J. I. Shaikh, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 15th JULY, 2024.

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. Defendant in Regular Civil Suit No. 186/2017 has filed this Petition taking exception to the order dated 25.11.2021 passed below Exhibit 29 and order dated 14.02.2022 passed by the Principal District Judge, Ahmednagar in Civil M.A. No. 184/2021 filed under Section 24 of Code of Civil Procedure.

3. It needs to be recorded at the outset that order passed below Exhibit 29 dated 25.11.2021 in Regular Civil Suit No. 186/2017 was challenged before this Court by filing Writ Petition No.

12531/2021 and said Petition was withdrawn by the Petitioner with a view to avail appropriate remedy as available in law.

4. It is thereafter Petitioner has filed application under Section 24 of Code of Civil Procedure before Principal District Judge, Ahmednagar for clubbing of Regular Civil Suit Nos. 186/2017 and 240/2019. This application is rejected by the Principal District Judge with the observation that it is beyond the scope of Section 24 of Code of Civil Procedure to make grievance against order dated 25.11.2021¹¹ passed below Exhibit 29 in Regular Civil Suit No. 186/2017. The Principal District Judge, however, had given opportunity to the applicant to seek appropriate available remedy in respect of order dated 25.11.2021.

5. Learned counsel for the Petitioner submits that this Petition is filed since the Principal District Judge has given liberty to the Petitioner to avail appropriate remedy. Hence, it deserves to be entertained.

6. At the outset, it needs to be recorded that this Court has already disposed of Writ Petition No. 12531/2021 challenging order

passed below Exhibit 29 in Regular Civil Suit No. 186/2017. It is not permissible to file fresh Writ Petition challenging the same order once Petition challenging it is withdrawn. Merely because the Principal District Judge observes in the order that the applicant is at liberty to seek appropriate available remedy, he cannot be permitted to file petition again.

7. Learned counsel for Petitioner has placed reliance on order of this Court in Writ Petition No. 12593/2018 decided on 12.12.2018 wherein liberty was granted to the Petitioner therein to file application under Section 24 of the Code of Civil Procedure for clubbing of the suits together. He has also placed reliance on judgment of this Court in Writ Petition No. 7370/2018 wherein similar request was accepted.

8. It needs to be emphasised that application filed under Section 24 of Code of Civil Procedure before the Principal District Judge could have been filed for the purpose of transfer of proceeding from one Court to another. Section 24 of Code of Civil Procedure reads thus :-

24. General power to transfer and withdrawal :- (1)
On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage -

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding, has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject, to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section -

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]

A bare perusal of above provision shows that power is vested in District Judge to transfer any suit, appeal or other proceeding pending before it to another Court for disposal or from one Court to another. This power of transfer includes power to re-transfer the proceeding. Perusal of the entire provisions of Section 24 of Code of Civil Procedure does not show any power with the Principal District Judge to direct two suits to be clubbed together for decision simultaneously. Needless to say that it is for the Trial Court before whom the two suits are pending to take a decision as to

whether owing to the subject matters of both suits, the same be decided by common trial.

9. Having regard to the aforestated position of law and the facts that Writ Petition filed against the same order has been withdrawn, this Court does not wish to entertain Writ Petition against the same order. As far as the order passed by the Principal District Judge is concerned, considering the provisions of Section 24 of Code of Civil Procedure, it was not open for the Principal District Judge to direct clubbing of these matters. Hence, there is no merit in the Petition. Petition stands dismissed.

10. At this stage, learned counsel for Petitioner prays for continuation of interim order.

11. Having regard to the facts and circumstances of the case and in view of the fact that the proceedings are pending since 2017, which is a five year old case, this Court is not inclined to extend the interim relief. Hence, request stands rejected.

(R. M. JOSHI)
Judge