



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4917 OF 2022

Sunita Alias Shakuntalabai Walmik Kajale

VERSUS

Jalindar Jayram Kajale And Others

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Mr. A. B. Kale, Advocate for the Petitioner

Mr. Y. R. Neb, Advocate for Respondent No. 2

Mrs. K. R. Jamdhade, AGP for Respondent/State

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CORAM : R.M. JOSHI, J

DATE : JUNE 13, 2024

PER COURT :

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

2. This Petition takes exception to the order passed by learned Second Joint Civil Judge, Senior Division, Kopargaoon dated 15.12.2021 rejecting application below Exh. 211 whereby the Defendant No. 11 had sought dismissal of the suit.

3. Heard learned Counsels for both sides. During the course of hearing, it reveals that suit came to be filed on 18.12.2013. An order came to be passed on 11.03.2016 by Civil Judge Junior Division, Kopargaoon directing the Plaintiff to add State as Defendant. It

is further observed therein that after addition of the State as party, the said Court has no jurisdiction to try the suit. It is further held that after the amendment is effected, a request letter to be issued to the Principal District Judge, Ahmednagar under the provisions of paragraph 233 of Civil Manual.

4. Learned Counsel for the Petitioner submits that once the State is joined as a party, Civil Judge Junior Division did not have jurisdiction to entertain the said suit and he ought to have returned the plaint for its presentation before appropriate Court. According to him, invocation of paragraph 233 of the Civil Manual is incorrect and even District Judge did not have power to transfer the said proceedings as only in case of a proceeding exceeding pecuniary jurisdiction of a Court such power of transfer can be exercised. He further raises an issue as to the period of limitation applicable to the suit as the suit is transferred in the year 2021 after the suit was filed in the year 2016.

5. Admittedly, now suit in question is pending before the competent Court of law i.e., Civil Judge,

Senior Division, Kopargaon. Learned Counsel for the Petitioner may be justified to make submissions that the procedure laid down in Civil Manual ought to have been followed and that District Court would exercise power to transfer the proceedings by invoking the provision of paragraph 233 of Civil Manual in case of pecuniary jurisdiction. However, having regard to the peculiar facts and circumstances of the case, this Court does not wish to go into the said issue.

6. Undisputedly, Petitioner/Defendant No. 11 was duly heard while passing order dated 11.03.2016 and in spite of having knowledge of the said order passed by the Civil Judge, Junior Division, whereby the Court has sought to take recourse of provisions of paragraph 233 of the Civil Manual, Defendant No. 11 did not challenge the said order. By not taking exception to the said order, he has practically acquiesced the same. Now, therefore, it is not permissible for this Defendant to raise objection with regard to the transfer of proceeding from one Court to another.

7. Needless to reiterate that the procedure is handmaid of justice and unless prejudice is shown to

have been caused to any party, such procedural orders even defective cannot be interfered with.

8. Having regard to the peculiarity of facts involved herein, by keeping all issues, objections etc to be raised by the parties to the proceeding, proceeding is permitted to be continued before Civil Judge, Senior Division, Kopergaon for its decision in accordance with law.

9. In view of the above discussion, there is no case made out to cause interference in the impugned order. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani