



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3102 OF 2024

Rama Balaji Watpalwar
VERSUS
Omprakash Digambar Balfewad

Mr. A. A. Fulfagar h/f Mr. P. R. Katneshwarkar, Advocate for petitioner
Mr. S. N. Lale Yelvatkar, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 26th NOVEMBER, 2024

PER COURT :-

1. This petition reveals the state of affairs at trial Court level, that with the change of Judicial officer, diagonally opposite orders are passed without understanding the repercussions of such orders. The order impugned is an example as to how the judge taking over charge of a file from Predecessor assumes himself to be the appellate Authority and practically overturns the order passed earlier in the same proceeding

2. There is no dispute about the position of law that doctrine of law res judicata is directed not only in the separate or subsequent proceedings but also at the subsequent stage of the same proceedings. If, this principle was understood by the trial Court in proper perspective, order impugned could not have been passed. Firstly, the issue which was already decided finally by the Court by order dated 05.01.2019 would

not have been framed again for consideration. Secondly, when an application is moved for deletion of this issue, the trial Court makes observations as if he is dealing with the order passed earlier as Appellate Authority.

3. Perusal of record indicates that an application Exh. 14 was moved by the defendant with specific plea that the suit is barred by Order XXIII Rule 1(4) of C.P.C. An issue was framed in this regard. This application was heard and decided and was rejected by order dated 05th January, 2019. None has challenged the said order. Once, the said issue is already decided, it was not open for the trial Court to frame the said issue again and to record findings thereon. Precisely, this wholly impermissible thing is sought to be done here in this case. The trial Court's observations in impugned order is in the form of disagreement with the findings recorded by Court while passing order on Exh.14.

4. Merely because the suit is at final stage of hearing, the Court cannot presume jurisdiction to re-hear and decide the issue which is already settled and decided after hearing the parties on merit. In such circumstances, this Court find substance in the petition. Issue No. 5 "whether, the suit is barred by Order XXIII Rule 1(4) C.P.C" cannot be re agitated before the trial Court since the same has been already decided on merit at earlier stage of the proceeding. Hence, application Exh.89 is

allowed and impugned order is set aside. Issue framed by trial Court about suit being barred by Order XXIII Rule 1(4) of C.P.C., stands deleted. Trial Court is directed to decide the suit on all other issues except issue No.5.

5. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

bsj