



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 21 OF 2022

V.V. Industries

A registered partnership firm,
having it's Registered office
at Plot No.K-129, MIDC, Waluj Industrial Area,
Tq. Gangapur, Dist. Aurangabad,
Through one of its Partners,
Shri. Sandeep Gangadhar Dahale,
Age : 47 years, Occ. : Business,
R/o. : Vivekanand Colony, Tilaknagar,
Aurangabad

... APPELLANT
(PLAINTIFF)

VERSUS

1. Shri. Pushkraj Ratnakar Wagh,
Age : 45 years, Occ. : Business,
R/o. : K-128, MIDC, Waluj, Aurangabad
2. Maharashtra Industrial Development
Corporation, Aurangabad Region,
Aurangabad,
Through its Regional Officer
MIDC, Railway Station,
Aurangabad

... RESPONDENTS
(DEFENDANTS)

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Mr. S.V. Adwant – Advocate for Appellant

Mr. Mahesh R. Sonawane – Advocate for Respondent No.1

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CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 18th January, 2024
PRONOUNCED ON : 21st February, 2024

JUDGMENT :

1. The appellant i.e. original plaintiff in Special Civil Suit No. 22

of 2013 has preferred this appeal against the judgment and order passed by the learned First Appellate Court i.e. District Judge – 8, Aurangabad in Regular Civil Appeal No. 21 of 2019 on 07.05.2021. By the aforesaid impugned order the learned First Appellate Court has set aside the judgment and decree dated 05.03.2015 in the aforesaid Civil Suit and remanded the matter back to the learned Trial Court by allowing the present respondent No.1 – defendant No.1 to file his written statement and to decide the suit on merit.

2. Background facts of the case are as under :

The appellant – plaintiff filed the aforesaid suit for Specific Performance of Contract and Mandatory Injunction directing the present respondent No.1 to registered the deed of assignment in respect of plot No. K-129 admeasuring 2250 Sq. meters at M.I.D.C. Waluj, Aurangabad. Since respondent No.1 could not file written statement, the learned Trial Court proceeded the suit ex-parte and decreed the same. Respondent No.1 then challenged the said decree before the learned First Appellate Court by filing the R.C.A. No.21 of 2019. The learned First Appellate Court set aside the judgment and decree of learned Trial Court and remanded the matter back to the learned Trial Court enabling respondent No.1 to

file written statement. Hence, this Appeal.

3. Learned Counsel for appellant – plaintiff vehemently argued that, the learned First Appellate Court did not follow the settled principle under which the remand order is to be passed. He pointed out that, the learned First Appellate Court even recorded its observations on merit in respect of disputed agreement between the parties, which might prejudice the mind of learned Trial Court while deciding the suit on merit. He relied on the following judgments :

- (a) Hon'ble Supreme Court in the case of **Syeda Rahimunnisa Vs. Malan Bi (Dead) by Legal Representatives and Another** in Civil Appeals Nos.2875-79 of 2010 reported in (2016) 10 SCC 315
- (b) Hon'ble Supreme Court in the case of **Akella Lalitha Vs. Konda Hanumantha Rao and Another** in Civil Appeal Nos.6325-6326 of 2015 reported in 2022 SCC OnLine SC 928
- (c) Hon'ble Supreme Court in the case of **J. Balaji Singh Vs. Diwakar Cole and Ors.** in Civil Appeal No. 5540 of 2017 reported in (2017) 14 SCC 207

4. Learned Counsel for respondent No.1 i.e. original defendant No.1 supported the impugned judgment and pointed out that, the learned First Appellate Court did not decide the matter on merit

but only remanded back to the learned Trial Court by giving opportunity to respondent No.1 of filing his written statement on record. He also relied on the judgment of Hon'ble Apex Court in the case of **Balraj Taneja and Another Vs. Sunil Madan and Another** in Civil Appeal No.4968 of 1999 reported in *AIR 1999 SC 3381*.

5. On the other hand, learned Counsel – Mr. Dande for M.I.D.C. prayed for passing appropriate order, fit to the circumstances of the case.

6. Heard rival submissions and also perused the documents on record. On going through the impugned order it appears that, the learned First Appellate Court has remanded the matter back to learned Trial Court for fresh trial with liberty to respondent No.1 to file his written statement within two months. Moreover, while setting aside the ex-parte decree passed by the learned Trial Court, the learned First Appellate Court has also directed the learned Trial Court to provide opportunity to both the parties for leading evidence. Thus, it appears that the learned First Appellate Court has only remanded the matter back and did not decide any rights of the parties to the disputed agreement.

7. Though the Hon'ble Apex Court in the case of **J. Balaji Singh** (*supra*) in paragraph 16 has observed as follows :

“16. In our considered view, the only error which the first Appellate Court committed was that it went on to record the findings on merits. In our view, it was not necessary to do so while passing the order of remand. The reason is that once the first Appellate Court formed an opinion to remand the case, it was required to give reasons in support of the remand order as to why the remand is called for in the case. Indeed, the remand was made only to enable the Trial Court to decide the case on merits. Therefore, there was no need to discuss much less record findings on several issues on merits. It was totally uncalled for.”

but, ultimately directed the learned Trial Court to decide the suit afresh on merits strictly on the basis evidence in accordance with law without being influenced by any observations made by the First Appellate Court and the High Court in their respective orders passed in these proceedings. Admittedly, the learned First Appellate Court has made certain comments on the admissibility of the documents produced on record by appellant – plaintiff. However, as per the aforesaid observations of Hon'ble Apex Court, the learned Trial Court is duty bound to decide the matter afresh and being uninfluenced by the observations of the learned First

Appellate Court.

8. Moreover, it appears that the suit of appellant – plaintiff was decreed ex-parte against the present respondent No.1 and, therefore, the observations of Hon'ble Apex Court in the case of **Balraj Taneja** (*supra*) relied upon by the learned Counsel for respondent No.1 applies squarely to the present case. It has been observed by the Hon'ble Apex Court that, the suit decreed merely on grounds of failure of defendants in filing written statement is illegal. Therefore, considering these aspects no interference is called for in the impugned order. As such, the Appeal from Order stands dismissed.

9. The Appeal from Order is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE