



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13365 OF 2022 WITH
WRIT PETITION NO. 5914 OF 2022

Parasram Venkoba Mane

VERSUS

The State Of Maharashtra Through
Collector And Others

...

Mr. D. S. Patil h/f Mr. S. S. Gangakhedkar, Advocate
for the Petitioner

Mr. S. B. Pulkundwar, AGP for Respondent/State

...

CORAM : R.M. JOSHI, J

DATE : JULY 16, 2024

PER COURT :

1. Heard finally at admission stage by consent of both sides.

2. Plaintiff in RCS No. 22/2015 is aggrieved by order dated 18.11.2021 passed in RCS No. 122/2021 filed by very same Plaintiff against the Defendants whereby the subsequent suit is stayed in view of Section 10 of the Code of Civil Procedure.

3. Plaintiff in RCS No. 122/2021 takes exception to order dated 28.01.2022 passed in Misc. Civil Application No. 13/2022 by Principal District and

Sessions Judge, Nanded whereby the application under Section 24 for transfer of proceedings of RCS No. 122/2021 to the Court before whom RCS No. 22/2015 is pending stood rejected.

4. Learned Counsel for Petitioner/Plaintiff in RCS No. 122/2021 claims that previous suit filed by the Plaintiff bearing no. 22/2015 against the Defendants/Respondents is withdrawn. However, undisputedly counter claim filed by the Defendants still subsists. At later point of time in the year 2021 RCS No. 122/2021 came to be filed with the averments that subsequently part of the suit property is acquired by the competent authority and issue is raised with regard to the right of receipt of compensation. It is his submission that in RCS No. 122/2021, plaint does not content the subject matter of RCS No. 22/2015 and as such, the provisions of Section 10 of CPC would not apply. In support of his submissions, he placed reliance in following judgments *British Indian Corporation Ltd. vs. Rashtraco Freight Carriers, (1996) 4 SCC 748, Aspi Jai and Anr vs. Khushroo Rustom Dadyburjor, AIR 2013 SC 1712 & Sadguru Constructions*

and Anr vs. Smt. Jaimeet Kaur Nirmansing Sial and Ors,
2006 (2) Mh.L.J., 794.

5. There is no dispute about the fact that RCS No. 22/2015 is filed by the Petitioner herein wherein Defendants had filed counter claim which indicates that the same is filed for entire property and part of which is subject matter in subsequent suit in RCS No. 122/2021. Perusal of the contention of the Defendants therein shows that the Defendants claim right in respect of property whereas Plaintiff in RCS No. 122/2021 claims the same right. Though suit has been filed with statement that subsequent portion of the suit property is acquired, the cause of action for filing of the suit of RCS No. 22/2015 remains intact as both parties claim their respective rights in respect of suit property.

6. At this stage, it would be relevant to take note of Section 10 of CPC which reads thus:

10. Stay of suit

No Court shall proceed with the trial of

any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

7. Having regard to the provisions of Section 10 of CPC, in case of involvement of issues in subsequent suit which are directly and substantially involved in the previous suit subsequent proceedings deserves to be stayed. In the case in hand, issues involved in RCS No. 122/2021 are directly and substantially involved in RCS No. 22/2015 and such suit filed later in time deserves to be stayed.

8. Having regard to these facts and Section 10 of CPC, no perversity found in the impugned order whereby RCS No. 122/2021 is stayed till disposal of RCS No. 22/2015.

9. Perusal of order dated 28.01.2022 shows that since the proceeding of RCS No. 122/2021 is stayed under Section 10 of CPC till decision of RCS No. 22/2015, no purpose would have been served by transferring said proceeding as sought. Hence, no perversity is found in the impugned order of rejecting transfer application.

10. In view of above discussion, both Petitions stand dismissed.

(R. M. JOSHI, J.)

Malani