

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4059 OF 2024

Vikram Dattatraya Nimhan

.. Petitioner

Versus

Vrindavan Sector A and B CHS Ltd & Ors.

.. Respondents

.....

- Mr. Ganesh M. Misal a/w Mr. Rohit Chavan i/by Mr. Vishal V. Kale for Petitioner
- Mr. Prabhakar Jadhav a/w Ms. Akshata Patwari for Respondent

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 26, 2024

P. C.:

1. Heard Mr. Misal, learned Advocate for Petitioner and Mr. Jadhav, learned Advocate for Respondent.

2. Order impugned in the present Writ Petition is dated 22.01.2023 passed by learned District Court in Application below Exh. 26 in Regular Civil Appeal No. 507/2018. Suit is originally filed by Respondents (Org. Plaintiffs) against Petitioner (Org. Defendant No. 3) and two others i.e. Dattatraya Buwaji Nimhan and Prakash Dattatraya Nimhan before the learned Trial Court. Suit is filed by the Co-Op. Housing Society against 3 members of Nimhan family seeking right of way through Survey No. 38 on the premise that there is existence of a road through Survey No. 38. According to Defendants, there is no such existence of any road through Survey No. 38 and they

are in possession of Survey No. 38. Suit has been comprehensively dismissed by a reasoned judgement & decree dated 04.12.2018 holding that Plaintiff Society has failed to prove the existence of road through Survey No. 38. The said judgment & decree is under challenge in Regular Civil Appeal No. 507/2018. While maintaining that challenge, Application is filed by Plaintiff i.e. Appellant seeking injunction against original Defendants from obstructing laying down of a water pipeline through Pune Municipal Corporation (PMC) or its contractors which is passing through Survey No. 138. It is contended by Appellant Society that water supply to the members of the Society is received through two pipelines passing underneath Survey No. 38 which have been laid by the PMC. It is contended that these pipelines are now old and they are required to be repaired. In that view of the matter, Application below Exh. 26 was filed. That Application has been allowed by the District Court on the ground that balance of convenience entirely favours the Plaintiff Society and Defendants cannot put up any obstruction thereto as the Society would suffer irreparable loss.

3. On reading the impugned order dated 22.12.2023, it is seen that the said order is passed merely on the basis of the Application filed by Society. There are no details whatsoever as to what extent the pipelines are required to be replaced, extent of work to be undertaken

and timeline involved, save and except to state that the said work of laying down of the pipelines has now been given to M/s. Larson & Toubro by the PMC. A complete go by is given to the judgment of the learned Trial Court while deciding this Application in favour of the Appellant (Plaintiff) Society.

4. Though I agree with the contention of Mr. Jadhav that laying down of pipelines would be a necessity, in view of the substantive findings returned by the learned Trial Court clearly holding that Plaintiff Society has failed to prove the existence of any road whatsoever out of Survey No. 38, the manner and modality in which the Society has filed the present Application without giving any substantive details is not appreciated by this Court. There is in fact no cause of action maintainable in the Appeal proceedings to maintain such an Application in the first place. Without opining on any issue on merits of the matter, I am of the opinion that Regular Civil Appeal No. 507/2018 which has remained pending for the last six years from 2018 should be disposed of by the learned District Court as expeditiously as possible in order to determine the substantive rights of the parties therein. Only thereafter, issues raised in Application below Exh. 26 could be considered.

5. Mr. Jadhav after taking instructions also makes a request and urges the Court that if RCA No. 507/2018 is directed to be disposed of

expeditiously, it would enure to the benefit of all parties. This request made by Mr. Jadhav is fair. Hence it is directed that learned District Court shall dispose of RCA No. 507/2018 as expeditiously as possible and in any event within a period of three months from today. Parties are directed to co-operate with the learned District Court to determine the Appeal and they should not take adjournments unless absolutely necessary. Order dated 22.12.2023 shall stand stayed till the disposal of RCA No. 507/2018 and shall not be acted upon. Rather, the order passed in the Application below Exh. 26 shall be subject to the decision of the learned District Court.

6. Mr. Jadhav would also inform the Court that Respondent No. 2 – Prakash Dattatraya Nimhan had expired on 09.12.2020. He would submit that Application below Exh. 28 has been filed for bringing legal heirs of Respondent No. 2 on record before the District Court. Names and details of legal heirs of deceased Respondent No. 2 – Prakash D. Nimhan are stated in paragraph No. 5 of the said Application. That Application is pending. By consent of both the parties, Application below Exh. 28 is allowed in terms of prayer clauses (a) and (b). Amendment is permitted to be carried out before the learned District Court in the Court papers within a period of one week from today. Learned District Court shall allow the amendment to be carried out on production of a server copy of this order.

7. Mr. Misal would also inform the Court that Respondent No. 1 in Appeal namely Dattatraya Buwaji Nimhan has expired in January 2024 leaving behind his legal heirs which are as under:-

- (i) Chandrakant D. Nimhan
- (ii) Ahilya D. Nimhan
- (iii) Vikram D. Nimhan

7.1. Out of the above three legal heirs, Mr. Vikram D. Nimhan is already a party to the Appeal i.e. Respondent No. 3. Mr. Jadhav has no objection if the remaining two legal heirs of deceased Mr. Dattatraya Buwaji Nimhan are brought on record in the Appeal proceedings before the District Court. Hence, in the interest of justice, the Appellants shall implead Mr. Chandrakant D. Nimhan and Ms. Ahilya D. Nimhan as Respondents in the Appeal. Amendment is permitted to be carried out in the record before the learned District Court within a period of one week from today. Learned District Court shall allow the amendment to be carried out on production of a server copy of this order.

7.2. The above orders are passed only in the interest of justice and in order to save any further delay in prosecuting the pending Appeal.

7.3. After carrying out the above amendment, amended cause title shall be exchanged by the parties with each other. All Pleadings shall also be served on the newly impleaded Respondents.

8. Learned District Court shall ensure that all parties are duly represented by their Advocates before hearing Regular Civil Appeal No. 507/2018 which shall be heard strictly on merits and in accordance with law. All contentions of the parties before the learned District Court are expressly kept open.

9. In view of the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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