

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15541 OF 2022

Mukim Ibrahim Rais

.. Petitioner

Versus

Abdul Bari Imamuddin Kharbe and Ors.

.. Respondents

-
- Mr. Kishor Patil i./by Mr. Amol P. Mhatre, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 26, 2024

P.C.:

1. Heard Mr. Patil, learned Advocate appearing for the Petitioner who is Defendant No.14/2 in the suit proceedings filed before the Trial Court. Though the other Respondents are arrayed as parties in this Writ Petition, original Defendant Nos.28 and 29 are the only contesting Respondents.

2. He would inform the Court that originally, Regular Civil Suit No.383 of 2014 was filed for partition of properties by two Plaintiffs against 30 Defendants. He would submit that by order dated 08.02.2020 the said suit was settled and compromise *pursis* was filed by all the parties except Defendant Nos.28 and 29.

3. Mr. Patil would next contend that original Defendant Nos.28 and 29 approached the Trial Court by filing Miscellaneous Application No.76 of 2020 for setting aside of the compromise *pursis* and settlement order before the Lok Adalat.

4. At the outset, Mr. Patil would contend that for setting aside of the order passed by the Lokadalat, no review is maintainable before the learned Trial Court and the only remedy available to any party is to file a Writ Petition. Next, he would contend that with the passage of time, the Defendant Nos.28 and 29 who had filed Miscellaneous Application No.76 of 2020 desired to withdraw the said Miscellaneous Application.

5. In the interregnum, Defendant No.14/2 who is Petitioner before me filed Application under Order VII Rule 11 of the Civil Procedure Code, 1908 (for short '**CPC**') to challenge maintainability of Miscellaneous Application No.76 of 2020 in view of the compromise decree. That Application was rejected by the Trial Court by the impugned order dated 09.02.2022. Being aggrieved, the Defendant No.14/2 filed the present Writ Petition against that order.

6. Mr. Patil would contend that even though the suit was compromised between Plaintiffs and Defendant Nos.1 to 27 and the no-objection of original Defendant Nos.28 and 29 was not taken, now they have reconciled their dispute and they desire to withdraw the Miscellaneous Application No.76 of 2020 filed by them.

7. According to him there can be no impediment whatsoever to allow them to withdraw Miscellaneous Application No.76 of 2020. He would contend that Application below Order VII Rule 11 of the CPC by

Defendant No.14/2 was necessarily filed to challenge filing of Miscellaneous Application No.76 of 2020 itself. He would submit that if Defendant Nos.28 and 29 are permitted to withdraw Miscellaneous Application No.76 of 2020 as per their own Application filed on 18.03.2023, the learned Trial Court should allow them to withdraw the same and the Petitioner i.e. Defendant no.14/2 will have no objection whatsoever if the same is allowed to be withdrawn. He would submit that in that view of the matter if Miscellaneous Application No.76 of 2020 is withdrawn, the present Petition itself would become infructuous. He has placed on record order dated 18.03.2023 passed by the learned Trial Court noting the above fact that Defendant Nos.28 and 29 who are Applicants in Miscellaneous Application No.76 of 2020 have filed a fresh Application for withdrawal of Miscellaneous Application No.76 of 2020.

8. In view of the above, present Writ Petition is disposed of since Miscellaneous Application No.76 of 2020 is now desired to be withdrawn by Defendant Nos.28 and 29 before the Trial Court after noting the submissions of Mr. Patil. The present Writ Petition therefore stands disposed of accordingly with a direction to the Trial Court to immediately decide status of Miscellaneous Application No.76 of 2020 in view of the withdrawal Application filed by Defendant Nos.28 and 29. Learned Trial Court is directed to pass an appropriate

order in accordance with law.

9. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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