

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8791 OF 2023

Mahadeo Piraji Kamble

.. Petitioner

Versus

Rambhau Maruti Mujumale

.. Respondent

-
- Mr. G. Kanchanpurkar i./by Mr. Sachin H. Deokar, Advocate for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 09, 2024

P.C.:

- 1.** Heard Mr. Kanchanpurkar, learned Advocate for Petitioner.
- 2.** This Writ Petition was heard on 01.02.2024, at the time of mentioning and following order was passed:-

“1. Not on board. Mentioned. Taken on board.

2. Perused the praecipe dated 01.02.2024. Heard Mr. Deokar, learned Advocate for Petitioner.

3. Mr. Deokar would submit that the impugned order dated 22.03.2022 allowing Exh. 5 Application of the Respondent in a Suit filed for permanent injunction by the Petitioner / Plaintiff has been passed in absence of Advocate for Plaintiff when the said Application was heard though it is stated that adequate opportunity was given to him.

4. In view of the above, an arguable case has been made out by Mr. Deokar for issuance of notice. Hence, issue notice to the Respondent made returnable on 09.02.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondent and inform about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondent to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

5. Respondent is directed to remain present either himself or through his Advocate on the next adjourned date. It is made clear that if Respondent remains absent despite service on the

next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in absence of Respondent.

6. *Stand over to 9th February, 2024 at 2:30 p.m.”*

3. In compliance of the order dated 01.02.2024, affidavit-of-service dated 08.02.2024 has been filed. Humdast is also served. Respondent is served. Despite service Respondent is not present.

4. This Court cannot wait any further and protract the case between the parties.

5. It is seen that order dated 22.03.2022 has been passed by the learned Trial Court injuncting Defendant who is Petitioner before me. Mr. Kanchanpurkar has drawn my attention to paragraph No.6 of the impugned order which refers to the order dated 07.03.2022 passed at the interim stage and on basis of which the learned Trial Court has proceeded to hear Application filed below Exhibit-5 and determined it finally. Order dated 07.03.2022 is at page No.16 of the Writ Petition. It is a handwritten order which records that despite the said proceedings having been called out repeatedly none appeared on behalf of the Defendant even when the Application filed below Exhibit-5 was determined. Subsequently on 22.03.2022 it has been recorded in paragraph No.6 of the order that none appeared for the Defendant before the Court.

6. Without delineating on merits of the matter or opining anything on the merits of the case, Mr. Kanchanpurkar has made a

submission that an opportunity be given to the Defendant to resist the Application filed below Exhibit-5. The situation which has arisen in the Trial Court has now arisen before me when despite service the Plaintiff (Respondent herein) is not present.

7. Be that as it may, considering the nature of controversy in the said proceedings passing of order in Application filed below Exhibit-5 is a crucial stage in the suit proceedings.

8. Mr. Kanchanpurkar assures the Court that Defendant will now not commit any dereliction and appear before the Trial Court to in the aforesaid Application. In order to give one final opportunity to the Defendant, the impugned order dated 22.03.2022 is quashed and set aside.

9. It is clarified that setting aside of the order is only because the Defendant has not been heard by the Trial Court and it is without expressing any opinion on merits.

10. However it is directed that Application below Exhibit-5 shall be heard afresh by the learned Trial Court and after hearing both the sides and reasoned order shall be passed on merits.

11. Allowing the Petition is certainly not unconditional. The Petitioner is directed to pay cost of Rs.5,000/- to the Plaintiff. Cost shall be paid within a period of two weeks from today. Copy of the

receipt of payment of cost shall be placed before the learned Trial Court alongwith copy of this order and only thereafter the learned Trial Court shall hear the Application filed below Exhibit-5 afresh and determine the same within a period of eight weeks from that date.

12. With the above directions, Writ Petition is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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HANUMANT
SAWANT

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SAWANT
Date: 2024.02.14
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