

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11825 OF 2023

Rajendra Pandurang Mhatre

.. Petitioner

Versus

~~Narayan Vishnu Mhatre (Patil)~~

(since deceased) through Legal Heirs

Liladhar Narayan Patil & Ors.

.. Respondents

.....

- Mr. Sagar Joshi for Petitioner
- Mr. D.S. Mhaispurkar for Respondent No. 24

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 29, 2024

P. C.:

1. Heard Mr. Joshi, learned Advocate for Petitioner and Mr. Mhaispurkar, learned Advocate for Respondent No. 24.

2. Mr. Mhaispurkar appears for one of the Defendants i.e. Defendant No. 24. Service report shows that since December 2023 office report is awaited in respect of service on other Defendants. Thereafter there is another office report dated 08.02.2024 which shows that notice has been served on Respondent Nos. 1A to 19 and 21 to 24D. In this view of the matter, hearing of the Writ Petition cannot be protracted any further for want of effect of service on some of the Respondents by this Court.

3. Present Writ Petition takes exception to the order dated 02.08.2023 passed by the learned District Court in Misc. Civil Appeal

(MCA) No. 71/2021 dismissing the Appeal. The said Appeal was filed by Plaintiff against two orders passed by the learned Trial Court below Exh. 1 and Exh. 85 dated 05.10.2021 and 06.10.2021. These orders were passed rejecting Plaintiff's Application for proceeding with the Suit due to delay. Principal order is order dated 05.10.2021. It is seen that the Suit was filed by Plaintiff on 16.04.2014 and issues were framed on 27.08.2019. However from 2019 to March 2021, sufficient opportunities were given to Plaintiff but Plaintiff derelicted and did not proceed in the suit proceedings any further. Thereafter Suit was kept on three further subsequent dates i.e. on 08.06.2021, 24.08.2021 and 05.10.2021 and on all three dates, Plaintiff sought repeated adjournment, hence the learned trial Court by order dated 05.10.2021 rejected the Application seeking adjournment with a detailed order thereby dismissing the Suit proceedings itself. This order came to be challenged in MCA No. 71/2021 before the learned District Court. Learned District Court after considering the aforementioned facts held that instead of filing the Application before the learned District Court, Plaintiff ought to have filed an Application for setting aside the order dated 05.10.2021 under Order IX, Rules 8 and 9 of the CPC considering that the parties were in fact present when the suit was dismissed.

4. *Prima facie*, it is seen that suit came to be dismissed during the Covid 19 pandemic period which had in fact been arrested by the Supreme Court by its extant orders passed in Suo Motu Writ Petition (C) No. 3 of 2020 and companion matters from 20.03.2020 to 28.02.2022. Though the learned District Court is right in its contention that appropriate Application ought to have been made before the Trial Court itself, that would lead to further delay. *Prima facie* I am of the view that the District court ought to have considered the MCA and after allowing the Appeal remanded the matter back to the learned Trial Court with an appropriate order rather than non-suiting the Plaintiff.

5. Without going to any of the merits of the matter between the parties, I am of the view that the orders dated 05.10.2021 and order dated 06.10.2021 as also the order dated 02.08.2023 are required to be set aside purely in the interest of justice and one last final opportunity is required to be given to the Plaintiff to prosecute the suit proceedings. Needless to state that such an order cannot be unconditional in the facts of the present case. There has been delay on the part of the Plaintiff to prosecute the Suit. There are in all 24 Defendants. In that view of the matter, Petitioner - Plaintiff is directed by this Court to pay costs of Rs. 5000/- to each of the 24 Defendants in the Suit proceedings. Such costs shall be paid by the Petitioner within

a period of two weeks from today and receipt of payment of costs shall be placed before the learned Trial Court.

6. If the above order passed by this Court is complied with by the Petitioner / Plaintiff, the order dated 02.08.2023 passed in MCA No. 71/2021 shall stand quashed and set aside. In that view of the matter, the said MCA shall stand disposed. Further the orders dated 05.10.2021 and 06.10.2021 shall also stand quashed and set aside on compliance of the above order, resultantlty requiring the Special Civil Suit No. 108/2014 to be heard and decided by the learned Trial Court. The learned Trial Court in that case shall hear and decide the said Suit as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law. It is clarified that the learned Trial Court shall not give any unnecessary adjournments to the parties unless they are absolutely necessary in case of any urgency or emergency and grant of such adjournment shall be at the sole discretion of the learned Trial Court.

7. It is clarified that this Court has not returned any opinion on the merits of the matter between the parties and the learned Trial Court shall not be influenced by any of the observations and findings in the impugned orders passed by the learned Trial Court as also by the learned District court while determining the Suit proceedings which

shall be decided strictly in accordance with law and based on the evidence led by the respective parties.

8. Copy of this order shall be placed before the learned Trial Court by the learned Advocates for the respective parties on 02.05.2024 at 10:30 / 11:00 a.m. and the learned Trial Court shall act on a server copy of this order accordingly and fix the schedule for hearing of the Suit proceedings.

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

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[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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Date:
2024.04.29
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