

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3453 OF 2024

Babaso Ramchandra Dudhat

.. Petitioner

Versus

Vijay Sadashiv Nilate & Ors.

.. Respondents

-
- Ms. Manisha Devkar for Petitioner
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 13, 2024

P. C.:

1. Heard Ms. Devkar, learned Advocate for Petitioner.
2. Present Writ Petition takes exception to the order dated 06.11.2023 passed by learned Trial Court in Application below Exh. 17 in RCS No. 1209/2023 whereby the Application filed by Petitioner (Org. Defendant) under Section 10 of the CPC for stay of Suit came to be rejected.
3. Perusal of the impugned order reveals that an earlier Suit has been filed by Plaintiffs for specific performance and perpetual injunction though it has been wrongly stated in paragraph No. 3 that the Suit is filed for declaration. After reading paragraph No. 3, it is clear that Suit is filed for injunction since it is filed under the Specific Relief Act.

4. Ms. Devkar would submit that the present Suit being RCS No. 1209/2023 is filed once again by Plaintiffs for declaration and perpetual injunction in respect of the same suit property between the same parties, hence, the Defendant filed Application under Section 10 of the CPC.

5. Considering the reliefs prayed for in the previous Suit and the present Suit, the stay Application ought to have been considered in its proper perspective. Ms. Devkar would submit that in the previous Suit, written statement has also been filed by Defendant.

6. An arguable case is made out by Ms. Devkar for issuance of notice and calling for reply from the Respondents.

7. Issue notice to the Respondents made returnable on 27.03.2024. 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 Respondents and inform them 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, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

8. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear

that if Respondents remains absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

9. In the meanwhile, learned Trial Court is requested by this court to defer the hearing of RCS No. 1209/2023 until the present Petition is determined by this Court at the stage of admission on the next adjourned date.

10. Stand over to **27th March, 2024.**

Amberkar

[MILIND N. JADHAV, J.]

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