

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 97 OF 2024

Indian Banks' Association	.. Applicant
Versus	
Vasant Damodar Vankurde & Ors.	.. Respondents

CIVIL REVISION APPLICATION NO. 138 OF 2024

Canara Bank	.. Applicant
Versus	
Vasant Damodar Vankurde & Ors.	.. Respondents

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- Mr. S.D. Kelkar for Applicant in CRA/97/2024
 - Mr. Shrihari Saranathan i/by Primacy Legal LLP for Applicant in CRA/138/2024
 - Mr. Rahul P. Kasbekar for Respondent No. 1 in both CRAs.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 18, 2024

P. C.:

1. Heard Mr. Kelkar, learned Advocate for Applicant in CRA/97/2024; Mr. Saranathan, learned Advocate for Applicant – Bank in CRA/138/2024 and Mr. Kasbekar, learned Advocate for Respondent No. 1.

2. Both Civil Revision Applications (CRAs) take exception to the order dated 30.11.2023 passed by the learned Trial Court in RCS No. 256/2023 whereby Applications filed by Applicants under O. VII, R. 11 of the CPC came to be rejected. Canara Bank is Defendant No. 5 in the said Suit proceedings. Applications were filed below Exh. 35 & 37 by

both the Revision Applicants under O. VII, R. 11 of the CPC for rejection of Plaint. Primary reason being that Suit did not disclose any cause of action. As per the averments in the plaint, Respondent No. 1 (Org. Plaintiff) had retired on 05.07.1997 and has filed the present Suit proceedings after a lapse of 26 years in respect of a subject which cannot be determined by the Civil Court at all; that the Suit is not maintainable on the ground of updation of pension of all retiring employees and all nationalized banks being sub-judiced before the Supreme Court and the issue involved in the present Suit proceedings is directly and substantially the issue in the Special Leave Petition pending before the Supreme Court. There are other reasons also i.e. non-joinder of the parties and maintainability of the Suit in a representative capacity by the Plaintiff. In essence, Plaintiff was an employee of Canara Bank and retired in 1997 and by virtue of the present Suit proceedings i.e. RCS No. 256/2023, he seeks updation of pension of all retired employees.

3. Application under O. VII, R. 11 of the CPC is filed by Applicant - Defendant before the learned Trial Court. It is contended by Revision Applicant that the principal relief rather which is the only relief claimed in the Suit is based on a bipartite settlement dated 29.11.1993 and in the event if it is required to be revisited, then the same would lie only before the appropriate Court i.e. the Industrial Court under

the provisions of the Industrial Disputes Act, 1947 and not in any civil Court. That apart, several defences were taken including the defence under O. I, R. 8 of the CPC i.e. representative capacity of the Plaintiff to maintain the Suit proceedings. It is also pointed out that Supreme Court has is also seized with the matter.

4. On the basis of the submissions made by Mr. Kelkar and Mr. Saranathan, I am of the *prima facie* opinion that the Suit is not maintainable rather curiously the learned Trial Court has despite noting the aforesaid issue has opined that the plea raised by Defendants can be decided at the stage of trial. I disagree with the findings returned by the learned Trial Court in paragraph Nos. 11 and 13 of the impugned order dated 30.11.2023. The impugned order deserves to be stayed immediately. Hence, impugned order dated 30.11.2023 is stayed. RCS No. 256/2023 shall not proceed any further before the learned Trial Court since this Court is now seized with the hearing of the present CRAs filed by Defendant Nos. 1 and 5.

5. Mr. Kasbekar informs the Court that he has instructions to appear on behalf of the original Plaintiff. He would submit that he has received instructions today morning and therefore requires time to take instrucionts. Mr. Kasbekar should be given time, however he shall take into cognizance what has been noted by the Court in this order and accordingly advance his submissions on the next adjourned date.

It is clarified that if this Court is not satisfied with the submissions made on behalf of the original Plaintiff, this Court shall not hesitate in passing appropriate orders in respect of disposal of the Suit proceedings also for want of cause of action.

6. Let the affidavit-in-reply be filed by the original Plaintiff strictly within a period of two weeks from today. No extension of time shall be granted for filing affidavit-in-reply as this Court is of the *prima facie* opinion that these CRAs will have to be allowed.

7. At the request of Mr. Kasbekar, stand over to **1st April, 2024.**

[MILIND N. JADHAV, J.]

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by RAVINDRA
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