



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 478 OF 2024

ALONGWITH

WRIT PETITION NO. 14205 OF 2024
(NOT ON BOARD. TAKEN ON BOARD)

Smt. Shashikala Rajendra Pai

R/o. Shivnagar Sanatan Ashram,
Devad, Post ONGC, Tal. : Panvel,
Dist. : Raigad

...Applicant/Petitioner

Vs.

1. **Shri Arjun Changa Surte**

2. **Shri Arun Changa Surte**

3. **Shri Jaydas Changa Surte**

4. **Smt. Devubai Changa Surte**

5. **Mrs. Indrabai Bharat Bhagat**

At post Ulwa (Kombadbhuze),
Tal. Panvel

6. **Mrs. Kisnabai Kamlakar Gavand**

R/o. Chinchpada, Tal. Panvel

7. **Smt. Devata Baliram Surte**

8. **Kum. Madhavi Baliram Surte**

Respondent Nos. 1 to 4, 7 and 8 are
resident of Village – Vichumbe, Tal.
Panvel, Dist. Raigad
and Respondent No. 8 is Minor

and is being represented by her mother
i.e. Respondent No. 7

...Respondents

Adv. Aloukik R. Pai a/w Adv. Priyanka Rammurthy i/by Adv. Prajakta Shringarpure	Advocate for the Applicant in MCA No. 478 of 2024 and Petitioner in WP No. 14205 of 2024
Mr. P. D. Dalvi i/by Mr. Dinesh Masurkar	Advocate for the Respondent Nos. 1 to 8

CORAM : S. M. MODAK, J.

DATE : 18th OCTOBER 2024

ORAL JUDGMENT :-

MISCELLANEOUS CIVIL APPLICATION NO. 478 OF 2024

1. Heard learned Advocate for the Defendant-Applicant and learned Advocate for the Plaintiff-Respondent Nos. 1 to 8.
2. The suit is pending before the Court of the Civil Judge Senior Division, Panvel. The transfer is sought by the Applicant on the ground of bias. The Applicant is having apprehension on the basis of nature of the Order passed.
3. As per Section 24 of the Civil Procedure Code, the power of the transfer of the High Court and the District Court is coextensive. The learned Principal District Judge is conversant with the pendency and

about judicial officers also. It is better for the Applicant to move the District Court first. Liberty is granted.

4. Hence, Misc. Civil Application is disposed of with a liberty to approach the Court of the Principal District Judge.

**WRIT PETITION NO. 14205 OF 2024
(NOT ON BOARD. TAKEN ON BOARD)**

5. In fact this petition was fixed on 16.10.2024, and now it is adjourned to 21.10.2024. As connected earlier Civil Application is on board today, it is taken on board.

6. Heard by consent at an admission stage finally.

7. Learned Joint Civil Judge Senior Division, Panvel as per two Orders dated 29.08.2024 and Order dated 01.10.2024 has rejected the prayer of the Petitioner thereby asking the witness-Anant Sitaram Palvankar for the Plaintiff to produce WhatsApp chat history.

8. Learned Judge has refused the prayer for want of details of mobile numbers and for the reason that witness during cross-examination has answered, he is not having those details.

9. My attention is invited to the prayers made in the plaint, the cross-examination of the witness on page no. 88 and both the

applications. Reliance is placed on the observations in case of *Union of India Vs. Ibrahim Uddin and Others*¹.

10. The prayer is opposed on account of irrelevancy and the reasons given by the learned trial Judge. The witness-Palvankar was examined to prove the school-leaving certificate. This certificate belongs to one Baliram Changa Surte, who is predecessor in title of the Plaintiff Nos. 7 and 8. The dispute in suit pertains to sale of his share. At that time he was minor. The head-master Anant Sitaram Palvankar was examined in order to prove the date of birth of that witness. He was cross-examined on the point of the witness communication with the Plaintiff, Para no. 7 is relevant. I have read.

11. The Petitioner as per Exh. 143 has sought for certain documents from the witness. All the documents are supplied, and they are also exhibited except documents on serial no. 3. It is Whatsapp chat history. The witness during cross-examination has answered that he is not possessing that documents. Furthermore, he answered that there is Whatsapp chat history in his phone. On the basis of these answers, two applications are filed.

¹ (2012) 8 SCC 148

12. He further submitted that this communication does not deal with issues raised in the suit. This conversation is only between the witness and the Plaintiff. The Petitioner wants to challenge the reliability of this witness.

13. I think the learned trial Judge has erred in one respect. The witness has said about WhatsApp chat history. Copy of that history can certainly be produced. So the prayer could have been allowed. When inquired about the duration, learned Advocate for the Petitioner submitted that the history can be for the duration from 14.12.2023 till 08.08.2024, page no. 135.

14. I am inclined to allow the writ petition. Ultimately, its evidentiary value can be considered, when the suit will be finally decided. It is important to note that the hearing of the suit is expedited. There is much emphasis on behalf of the Respondent about conduct of the Petitioner in filing frivolous application and challenging them in every now and then. Ultimately, the Petitioner has to adhere to the time limit in purported exercise of his power. He is not entitled to make frivolous application and challenge them in every now and then. This conduct needs to be deprecated, and even the trial Court can

regulate the conduct by imposing exemplary cost. If he makes an application before learned Principal District Judge, he will decide it on its merits. Above observations are not made after going through the facts of this case, but they are made so as to assist the trial court in regulating the conduct of the Parties.

15. With these observations following Order is passed:-

ORDER

- (i) Writ Petition is allowed.
- (ii) The Orders dated 29.08.2024 and 01.10.2024 are set aside.
- (iii) The Witness – Anant Sitaram Palvankar is directed to produce the print-out of WhatsApp chat history from period 14.12.2023 till 08.08.2024 within six weeks.
- (iv) Once the copy of this Order be placed before the trial Court, the trial Court to issue necessary directions.

16. Accordingly, Misc. Civil Application and Writ Petition are disposed of.

[S. M. MODAK, J.]