



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.526 OF 2024

Gopal Baliram Parodkar .Vs. Gurukrupa Agencies through Prop. Yogesh
Vinaychandra Shah and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.M. Bhangde, Advocate for petitioner.

Shri B.M. Lonare, Advocate for respondent No.1.

CORAM : ANIL S. KILOR, J.

DATED : 08/02/2024

1. The order dated 28.11.2023 passed below Exh.21 rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure (CPC) filed by the petitioner for the rejection of the suit on the ground that cause of action does not survive, is under challenge in this writ petition.

2. The respondent filed a suit for declaration and permanent injunction with the following prayer clauses :

"1] Suit be decreed with costs.

2] The decree for declaration be passed in favour of plaintiff and against the defendant No.1 thereby declaring that, the notice dated 05/07/2023 bearing outward no.2636/2023 issued by the defendant No.1 to plaintiff, is illegal, void-ab-initio, perverse, malafide, high handed, arbitrary, erroneous, against the principles of natural justice and not binding upon the plaintiff regarding the shop no.4 in the name of Gurukrupa

Agency, Murtizapur which is fully described in para no.1 of the plaint.

3] The decree for permanent injunction be passed in favour of plaintiff and against the defendant No.2, thereby restraining the defendants, their employees, officials, agents, servants, relatives, friends or anybody claiming through them permanently from disturbing, dispossessing, entering and interfering in the peaceful possession of the plaintiff over the suit shop no.4 which is fully described in para no.1 of the plaint without following due process of law. Moreover the defendant no.1 be restrained from taking any coercive action under the garb of notice dated 05/07/2023 for cancellation, suspension, revocation, alteration of the license standing in the name of plaintiff bearing Shop no.4 of Gurukrupa Agency, Murtizapur without following due process of law.

4] Any other relief which this Hon'ble Court deems, fit and proper may kindly be granted in favour of plaintiff and against the defendants, in the interest of justice and equity."

3. It is the case of the petitioner that, the show cause notice dated 05.07.2023 referred in prayer clause (2) merged with the final order subsequently passed after filing of the suit, by the defendant No.1 and since the appeal is provided against such order, prayer clause (2) does not survive. He, therefore, submits that, the suit needs to be rejected under Order 7 Rule 11 of the CPC.

4. I do not find favour with the argument made by the learned counsel for the petitioner for the reason that, prayer clause (3) relates to permanent injunction sought by the plaintiff as regards possession and there is no reason

stated in the application for not considering the prayer clause (3).

5. The learned trial Court therefore, rightly considered the case of the plaintiff and thereupon, arrived at a conclusion that the application moved by the petitioner needs to be rejected.

6. Accordingly, I do not find any merit in the present writ petition, the writ petition is **dismissed**.

7. At this stage, learned counsel for the petitioner states that, since certain observations are made by the learned trial Court as regards the order passed by the respondent No.1 in pursuance to the show cause notice dated 05.07.2023 referred in prayer clause (2) of the suit, the authority may get influence in the appeal filed by the respondent/plaintiff against the order passed by the defendant No.1.

8. In the appeal filed by the respondent/plaintiff against the order passed by the defendant No.1, the authority is directed not to get influenced by any of the observation made in the impugned order.

JUDGE