

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

**WRIT PETITION NO.4181/2023**

Suresh s/o Krishnarao Bhole (dead), thr. LR's, Rajan Suresh Bhole and others  
 Vs.

Shankarlal Narayandas Katariya and others

Office Notes, Office Memoranda of Coram,  
 appearances, Court's orders of directions  
 and Registrar's orders

Court's or Judge's orders

Shri Abhijeet Khare and Ms Vidya Umale, Advocate for petitioners  
 Shri P.R. Chakole, Advocate for respondent Nos.1 and 2

**CORAM : ANIL L. PANSARE, J.**

**DATED : 05/09/2024**

Heard.

2. The challenge is to order dated 18/04/2023 passed by the learned Principal District Judge, Nagpur rejecting the application filed by the petitioners under Section 24 of the Civil Procedure Code, 1908 (in short "CPC").

3. The petitioners sought to transfer RCS No.81/2018 filed by respondent No.1, Shankarlal Katariya against petitioner No.2 Shriram Bhole for ejectment, possession and damages, pending before the Small Causes Court, Nagpur to the Court of Civil Judge, Senior Division, Nagpur, where the suit was filed by petitioner No.1 Suresh Bhole (since deceased) and petitioner No.2 Shriram Bhole bearing Special Civil Suit No.202/2012 for partition, declaration, possession and perpetual injunction against respondent No.1 Shankarlal Katariya, respondent No.2, Amarlal Katariya and respondent No.3 Pradip Bhole.

4. The Principal District Judge noted that the petitioners had earlier filed an application under Section 10 of the CPC, which came to be rejected. Writ petition was preferred against the said order. The Counsel for the petitioners (applicants before the Principal District Judge) made a statement that the said writ petition will be withdrawn if the present application is allowed.

5. The Principal District Judge then noted that one suit is more than 10 years old and other is 5 years old and that for all these years, no such application was filed. Most importantly, the learned Principal District Judge has found that dispute between the parties and also parties in both the suits are not similar and further held that only because application filed by the petitioners under Section 10 of the CPC has been rejected, the application under Section 24 of the CPC has been filed that too belatedly. Thus, the petitioners were found to be involved in delaying tactics.

6. During the course of argument, it was pointed out by the learned Counsel for the respondents that the writ petition filed by the petitioners challenging order passed by the learned Trial Court rejecting application under Section 10 of the CPC was withdrawn on 15/03/2023 and, therefore, the order dated 24/02/2022 passed by the learned Trial Court has attained finality wherein a categorical finding is recorded that the nature of both the suits are

different.

7. The Counsel for petitioners submits that such withdrawal will be of no consequences inasmuch as merely because the application filed under Section 10 of the CPC has been rejected, the Principal District Judge is not denuded of the exercises of its power to transfer the suit if the ends of justice call for the exercise of such power. In support, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Chitivalasa Jute Mills Vs. Jaypee Rewa Cement, (2004) 3 SCC 85*.

8. To my mind, the aforesaid judgment will be of no assistance to the petitioners. In the said case, the Hon'ble Supreme Court found that cause of action alleged in both the suits refers to the same period and same transaction, the issues arising for decision would be substantially common and almost same set of oral and documentary evidence would be needed to be adduced. The Court then found that there will be duplication of recording of evidence if separate trials are held. In the peculiar facts and circumstances of the case before it, the Hon'ble Supreme Court further found that possibility of two Court recording inconsistent finding cannot be ruled out. The Court then proceeds to record that an application under Section 10 of the CPC was rightly filed and it ought to have been allowed and, thereafter, the Court proceeds to hold that merely because the plea under Section 10 of the CPC has been rejected, the Hon'ble Supreme

Court is not denuded of the exercise of its power to transfer the suit if the ends of justice call for the exercise of such powers. This finding has been rendered in the proceeding filed before the Hon'ble Supreme Court under Section 25 of the CPC.

9. One cannot really question the Supreme Court's power to transfer the suit despite the application under Section 10 of CPC having been rejected, particularly considering the peculiar facts before it. Such is not the case here. The Principal District Judge held that parties to both the suits and nature of suits were not similar. Further, in the case before Supreme Court, the Court was of the view that the application filed under Section 10 of the CPC ought to have been allowed, meaning thereby that the nature of both the suits was similar. As against, in the present case the application filed under Section 10 of the CPC was rejected and challenge thereto was withdrawn. In any case the Supreme Court has not laid down a law that rejection of application filed under Section 10 of the CPC is inconsequential for deciding application seeking transfer of suit. In the present case the rejection is significant.

10. The effect of rejection of application filed by the petitioners under Section 10 of the CPC, coupled with the fact that the challenge to the said order was withdrawn, is that the order passed by the learned Trial Court has attained finality. The learned Trial Court has categorically held that the nature of both

the suits is different.

11. It is worth mentioning here that the petitioners had filed application on the ground that same issue is involved in both the suits and further that parties to both the suits is same. Out of the above, the finding of the learned Trial Court that nature of both the suits is different has attained finality and therefore, the petitioners cannot argued that the nature of both the suits is same. So far as the parties are concerned, though some of them are common, all are not parties to both the suits.

12. At this stage, learned Counsel for the petitioners has invited my attention to the order dated 15/03/2023 passed by this Court in writ petition No.3688/2022 permitting the petitioners to withdraw the petition to pursue the application filed by him to transfer both the suits. He submits that the High Court granted him liberty to pursue the application. This would, however, not disturb the settled principles of law that on withdrawing the challenge, the order impugned will attain finality. Most importantly the petitioners did not disclose the said fact to the learned Principal District Judge and mislead him by contending that the said petition will be withdrawn if the application seeking transfer is allowed. This conduct is highly depreciable and stands deprecated. On this count alone, the petition is liable to be dismissed.

13. In the circumstances and for the reasons stated herein above, I do not find any reason to interfere with the impugned order in the writ jurisdiction. The petition is dismissed.

(ANIL L. PANSARE, J.)

*R.S. Sahare*