



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

WRIT PETITION NO. 887 OF 2019

(Mohd. Ziyauddin Mohd. Anwaruddin Faruqui Vs. Mohd. Issaq Mohd. Yusuf and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of direction,
order
and the Registrar's orders.*

Court's or Judge's

Mr. R.D. Wakode, Advocate for Petitioner.
Mr. A.B. Mirza, Advocate for Respondent No.1.
Mr. S.A. Nerkar, Advocate for Respondent No.2.
Mr. A.R. Fule, Advocate for Respondent No. 4.

CORAM : ABHAY J. MANTRI, J.

DATE : SEPTEMBER 12, 2024.

Heard the learned Counsel for petitioner and respondent Nos. 1, 2 and 4. Respondent No.5, though served, has chosen not to appear in the matter. The petition is dismissed against respondent No. 3.

2. The petitioner/original Plaintiff is challenging the orders passed below Exhs. 48 and 50 dated 13.01.2015 and 04.03.2015, respectively, by Civil Judge, Sr. Division, Pusad, thereby the applications filed by respondents No.1 and 2/ original defendants No. 1 and 2 were allowed, and the plaint against defendants No.1 and 2 has been rejected under Order 7 Rule 11 of the Civil Procedure Code.

3. The learned Counsel for the petitioner submitted that the judgment in the case of ***Mahdavi Prasad Aggrawal and Belkhede***

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covers the issue raised in the petition. Thus, he canvassed that the rejection of the plaint in part /only against defendants No.1 and 2 in the exercise of powers U/O 7R,11(d) of the C.P.C. is not permissible. Hence, he urges to set aside the impugned orders.

4. In response, Mr. Mirza, the learned Counsel for respondent No.1, fairly admits the said legal position and submits that if the impugned orders are set aside, then liberty be granted to the respondents to move the application afresh.

5. Having considered the submissions and dictum laid down in the cited Judgment and perusal of the record, in my view, it is apparent from the dictum laid down in the case of ***Madhav Prasad Aggrawal*** (supra) that the said judgment squarely covers the issue raised in the petition. Hence, I found substance in the submissions of learned Advocates for the parties.

6. In this background, I deem it appropriate to pass the following order:

Order

i) The Writ petition is allowed. No Costs.

ii) The impugned orders below Exh. 48 and 50 dated 13.01.2015 and 04.03.2015, passed by Civil Judge, Sr. Division, Pusad, are hereby quashed and set aside.
Belkhede

iii) Needless to clarify, the defendants are at liberty to move the application afresh, if any, as permissible in accordance with the law to raise the said question.

(ABHAY J. MANTRI, J.)