



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 WRIT PETITION NO. 2901 OF 2024

HARUN HAIDAR SHAIKH PINJARI
VERSUS
BALDEV DEVRAO GORDE AND OTHERS

Mr. H. D. Deshmukh, Advocate for the petitioner

CORAM : R. M. JOSHI, J.
DATE : 15th APRIL, 2025

PER COURT :-

1. None present for the contesting respondents. An opportunity was granted to these respondents to cause appearance and to oppose the petition. Their absence indicate that these respondents are not interested in opposing the petition.
2. Heard.
3. Perused the record.
4. The facts as they appear from the fact indicate that respondent No.1 filed suit bearing R.C.S. No. 299/2002 seeking injunction in respect of house property being City Survey No. 313 situated at village Kukana, Tq. Newasa, District Ahmednagar against the petitioner. This suit came to be dismissed for want of prosecution on 10/12/2002. Respondents filed suit bearing R.C.S. No. 132/2005 against

the petitioner for injunction and possession of the same property. A compromise took place between the parties on 23/03/2007 and half of the suit property of the respondents was agreed to be transferred by registered sale deed to the petitioner for a consideration of Rs.65,000/-. This compromise was accepted and acted upon by the parties. Again on 23/04/2010 R.C.S. No. 278/2010 was filed by respondent No.1 against the petitioner for declaration and possession. This suit also came to be dismissed in default in 20/12/2017. Civil M.A. bearing No. 83/2017 for restoration of the said suit came to be filed which also was dismissed in default on 07/03/2022. It is thereafter R.C.S. No. 816/2022 was filed by respondent No.1 against the petitioner for declaration and possession of the same subject property. In this backdrop petitioner filed application Exhibit 19 under Order 7 Rule 11(d) of the Code of Civil Procedure (for short 'CPC') contending that the suit is barred by the provisions of Order 9 Rule 9 read with Order 23 Rule 3(a) of CPC. Since this application came to be dismissed, present petition.

5. Learned counsel for the petitioner has drawn attention of the Court to the previous suits and orders passed therein in order to contend that on two counts that is for the reason that the previously instituted suits were dismissed in default, it is not permissible for respondent No.1 to institute fresh suit on the same cause of action. It is also contended

by him that since there was a compromise decree obtained in R.C.S. No. 132/2005, it is not open for respondent No.1 to file fresh suit in view of bar created by Order 23 Rule 3-A of the CPC.

6. Perusal of the record indicates that respondent No.1 had filed suit being R.C.S. No. 299/2002 in respect of the property as mentioned herein above. This suit was filed for injunction against the petitioner. This suit came to be dismissed for want of prosecution on 10/12/2002. Respondent No.1 thereafter instituted fresh suit being R.C.S. No. 132/2005 which was decreed in view of the compromise arrived at between the parties. There is nothing on record to indicate that the said compromise was not acted upon. Respondent No.1 filed another suit being R.C.S. No. 278/2010 seeking declaration and possession in respect of the same subject property. This suit also came to be dismissed for want of prosecution. Application filed for restoration thereof along with condonation of delay was dismissed. In the light of these facts, question came up before the Trial Court was as to whether the suit is barred by the provisions of Order 9 Rule 9 of CPC and Order 23 Rule 3-A of CPC.

7. Perusal of application filed by the petitioner clearly indicates that specific objection was raised with regard to the maintainability of the suit on these counts. Learned Trial Court in the impugned order though has referred to the previous suits as well as the orders passed

therein, proceeded to reject the application by holding that the present suit is filed on the separate cause of action. Perusal of the plaint or said order the record does not indicate any fresh cause of action being spell out by respondent No.1 while filing R.C.S. No. 816/2022. Similarly there was compromise decree obtained by parties in respect of suit property in previously instituted suit. The learned Trial Court, therefore, has failed to take into consideration the bar created for Order 9 Rule 9 of CPC so also Order 23 Rule 3-A of CPC thereof. As a consequence, the suit filed by respondent No.1 against the petitioner for the same subject property on the same cause of action is not tenable in view of the earlier suit being dismissed for want of prosecution so also there is a compromise decree passed in the suit instituted by respondent No.1 in R.C.S. No. 132/2005.

8. As a result of above discussion, impugned order cannot sustain, hence set aside. Application Exhibit 19 stands allowed. The plaint stands rejected. Registry to communicate this order to the Trial Court for passing formal order on the application.

9. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

ssp