IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12553 OF 2024

Kalpesh Bhatu Fhulpagare
VERSUS
Manoj Punju Patil And Another
...
Mr. A. P. Bhandari, Advocate for the Petitioner
Mr. D. D. Pande, Advocate for Respondent nos.1 and 2
.....

CORAM : AJIT B. KADETHANKAR, J.

DATED : 12TH OCTOBER, 2026

P.C. :-

. Special Civil Suit No.531 of 2022 came to be filed by the petitioner in the Court of Civil Judge Senior Division, Dhule seeking decree of recovery of amount worth Rs.9,30,000/-. Petitioner/plaintiff contended that he was engaged by the other side to carry out construction of the property belonging to the defendant/respondent on certain terms and conditions. The terms and conditions were reduced to writing by both the parties. Contending that the defendant at several occasions stood reluctant to pay construction charges as were demanded, the plaintiff was constrained to file the suit.

2. During the pendency of the suit, an application came to be filed by the petitioner/plaintiff under Order XXVI Rule 9 of

the Civil Procedure Code in January, 2024 seeking appointment of Court Commissioner to ascertain the construction level. During pendency of the said application, the defendant continued to construct the under construction site and completed the construction. When the application was heard for final disposal in the Trial Court, the plaintiff sought to contend that the Court Commissioner was necessary to ascertain the stage up to which the plaintiff has performed his job. The said application came to be dismissed by the Trial Court observing that to ascertain quality of construction, an application for appointment of Commissioner cannot be justified.

3. Today when the matter is taken up for hearing, Mr. A. P. Bhandari, learned Advocate for the petitioner submits that the plaintiff never filed an application to ascertain quality of the construction to determine the liability of recovery on the defendant. He would submit that apparently due to the disputes between the parties, the plaintiff was constrained to abandon construction work and to justify his recovery for an amount of Rs.9,30,000/-, his application was absolutely justified to bring on record the stage of construction. Thus, Mr. Bhandari justifies the

application and seeks quashing and setting aside the impugned order.

4. Mr. D. D. Pande, Learned Advocate for the respondents would advocate the findings rendered by the Trial Court. He would also submit that since differences cropped between the parties, the respondent could not be expected to leave the construction site incomplete and hence, further construction was completed without taking assistance from the plaintiff.

5. May it be, considering that the construction itself is completed, the application/object of appointment of Commissioner under Order XXVI Rule 9 of the Civil Procedure Code has lost its significance.

6. Mr. Bhandari was at pains to demonstrate that during pendency of the application and in order to frustrate the application and its object, the defendant hurriedly complied the construction. Highlighting these events, he submits that adverse interference be drawn against the defendant on the basis of his conduct.

7. Mr. D. D. Pande, learned Advocate for respondent nos.1 and 2 submits that all these issues are required to be agitated before the Trial Court but not in the Writ Petition.

8. After having heard both the sides extensively and considering that the application under Order XXVI Rule 9 of the Civil Procedure Code has lost its significance on account of the subsequent development, I deem it appropriate to dispose of this Writ Petition without making any observation. Hence, the following order:

ORDER

a. Writ petition stands disposed of.

b. All contentions kept open to be agitated by the parties before the Trial Court including the right of petitioner to establish the actual status of the construction on the date of cause of action.

c. Considering the age of suit, the Trial Court is requested to conclude the suit proceedings within a period of 10 months from today.

d. Both the sides candidly agree not to seek any unnecessary adjournment in the suit and undertake to assist the court for early disposal. Suffice to note, this Court has not observed anything on the merits of either party.

(AJIT B. KADETHANKAR, J.)

Rushikesh/2026