

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10848 OF 2004

Narsinh Ramchandra Shinde ..Petitioner.

vs.

Smt.Shobhadevi N. Shinde & Ors. ..Respondents.

Shri Ashok Bhatewara, i/b. N.G.Mahajan, Advocate
for the Petitioner.

Shri Vilol Khaladkar i/b. C.S.Radia ,Advocate for
the Respondent no.1.

CORAM : S.R.SATHE, J.

DATED : 31st December, 2004.

P.C. :

1. Heard the learned Advocate for the
petitioner as well as the learned advocate for the
respondents.

2. Being aggrieved by the order passed by the
Joint D.J., Pune, in transfer application i.e.
M.A. 711 of 2004 whereby the petitioners request
for transferring the suit pending before the Court
of Jt. CJSD, (Mr.V.P.Avhad) Pune, was rejected,

the petitioner/original defendant in Spl.Civil Suit No.207/2001 has filed the present petition for setting aside the order of Jt. D.J., Pune and for transferring the said suit to some other Court.

3. The main grievance of the petitioner is that he has filed one contempt petition against the concerned trial judge and when the said contempt petition is pending it is not desirable on the part of the said judge to decide the matter which is before him. There is apprehension in his mind that as he has filed the contempt petition against the Judge, he would not decide the said matter impartially and the petitioner may not get justice. It is on this basis that the learned advocate for the petitioner vehemently argued before me that the learned Jt.D.J. Pune, ought to have transferred the suit by allowing the transfer application. Secondly, he canvassed before me that the learned Jt.D.J. has not at all taken into consideration the fact of contempt petition being filed by the petitioner. As against this the learned Advocate for the respondent strenuously

argued before me that the Jt. D.J. has taken into consideration all the facts and circumstances and has infact observed that the application for transerring the suit was ill founded. He, therefore, submitted that when entire evidence is over and matter is already fixed for judgment on 4.1.2005 there is no need to allow the petition or grant any interim relief.

4. It is an clear from the record that the suit in question has checkered history. In the year 2001 High Court had given specific direction that the suit be disposed of within a particular time. Inspite of the same, for one reason or the other, according to the respondent-plaintiff's because of the delaying tactics that were carried out by the petitioner-defendant suit could not be decided in time and the court was required to seek extension of time and the last date which was given for the disposal of the suit has also expired on 25.12.2004.

5. While considering the question as to whether the suit should have been transferred from

the concerned court, because of the fact that the present petitioner has filed contempt petition against the said judge, one has to take into consideration the averments in the said contempt petition. One has to see as to what is the alleged contempt that has been attributed towards the concerned Judge. From the submissions made before me by the learned Advocate for the present petitioner it appears that the grievance that was made against the concerned judge was that while disposing of certain applications during the course of hearing of the suit, the learned Advocate for the present petitioner had cited various rulings of our High Court as well as of the Apex Court, but the learned trial Judge did not consider the said rulings and decided those applications against him and thereby committed the contempt. First such application was given in respect of recalling the witness, which was rejected. Another incident was with regard to producing affidavit of the witness and the third was when the present petitioner had moved the application before the trial judge and requested that the issue with regard to admissibility of

secondary evidence be decided first and for that purpose drawn the attention of the learned trial Judge to various rulings of the High Court and Supreme Court. The learned Advocate for the present petitioner submits that so far as the contempt petition is concerned that is restricted to the last event with regard to admissibility of secondary evidence. For the first two instances there were separate writ petitions and the same have already been disposed of. Reference to it is not made in the contempt petition and as such they are irrelevant for the present petition.

6. It is an admitted position that earlier the present petitioner had in fact filed separate writ petition in respect of the first two applications i.e. in respect of the application regarding recalling of witness and production of affidavit of witnesses and both these Writ Petitions were dismissed by this Court and at that time though it was agitated by the learned Advocate for the present petitioner that the trial Judge has not taken into consideration the rulings cited before me. This Court was pleased to

observe that the said rulings were infact not relevant. I have mentioned this fact in order to know the background of all the circumstnces under which the contempt petition was filed as well as the present petition is filed.

7. As mentioned above, it is necessary to assess whether the allegations in the contempt petition are such as a result of which it is necessary to transfer the matter from the concerned Judge, one has to see the exact averments made in the petition. However, unfortunately, the petitioner has not annexed the copy of the said contempt petition and it is now produced before me. From the perusal of the said petition it appears that grievance of the petitioner is that the learned trial Judge has not followed or observed the binding precedents of this High Court and Supreme Court though the same were cited before him to show how the photographs produced by the plaintiff's witness cannot be admitted in evidence. So, it is not even the case of the petitioner that the said rulings were not considered by the said Judge. Now, under what

circumstances the learned trial Judge did not follow those rulings can be decided only after perusing the entire order passed by the learned trial Judge. if we peruse the said order below exhibit 529 it does appear that the learned trial Judge has infact given the reasons to point out as to why the ratio of the cases cited by the learned Advocate for the present petitioner are not applicable to the case in hand and would not help defendant. So, being aggrieved by that order the petitioner has infact filed the contempt petition. So, the alleged contempt is in respect of a judicial order that has been passed by the Court while discharging his duty. So, merely because the trial Judge did not follow and observe the ratio of the rulings that was cited by a particular party it can not be said that the contempt petition filed by the aggrieved party is of such a nature that as a result of it the learned trial Judge will be be definitely prejudiced or that he would have some grudge or grievance against the party who has filed the petition against him. Incidentally, it must be noted that while disposing of Writ Petition

No.7389 of 2004 this Court (Coram :P.V.Kakade,J.) has also observed that rulings cited by the defendant's advocate are not strictly applicable. When such was the position the learned trial Judge must have felt that it is not necessary to refrain from deciding the matter merely because defendant has filed contempt petition against him. It is true that there may be incident when having realised that such petition has been filed by the party before him, one may say that he would feel awkward to proceed with the suit under the circumstances and the same be transferred from his Court. But merely because here the learned Judge has not chosen that course we can not jump to the conclusion that the judge would decide the matter partially or that he may be having prejudice against the party who has made the contempt petition.

8. It is worth to note that though the said contempt petition has been filed on 18.10.2004 till today the same is not even admitted. Ofcourse, it is argued before me that the present petitioner's advocate could not get circulation

and as a result of the same that has not come for admission. If really the defendant had an intention to get it admitted early, he could have moved the Court through advocate but there is nothing on record to show that such genuine efforts were made. Be that as it may, the fact remains that the said contempt petition is not admitted as yet. In my opinion, taking into consideration these peculiar facts and circumstances and the nature of the contempt petition, it can not be said that it was necessary for the Joint D.J to transfer the matter to some other court.

9. It has come on record that the suit is now posted on 4.1.2005 for judgment. Having regard to all these circumstances and the fact that time bound programme is already given by the High Court and Joint District Judge, Pune has observed that the present petitioner is trying to protract the proceeding, there is no need to transfer the suit to other Judge or to stay further proceedings of the same. I am not at all inclined to grant any interim relief. The petitioner's prayer in that

behalf is rejected.

10. The learned advocate for the petitioner submits that non-granting of interim relief under the circumstances would amount to disposing of the entire petition because the petition would become infructuous as the suit is fixed for judgment on 4.1.2005. In view of that, he submitted that the above order as well as further proceedings of the suit be stayed as defendant desires to file SLP in the Supreme Court. In the facts and circumstances mentioned above, I do not think that there is any justifiable ground to grant stay as prayed. Hence prayer in that behalf is rejected.

. Parties to act on the authenticated copy of this order.

(S.R.Sathe, J.)