

ORDER BELOW EXH.45 IN CIVIL M.A. NO. 247/2014

(CNR No. MHDH010036952014)

(Manohar Khandu Shevatkar -v/s- Bharat Pandurang Jambhale+5)

(Passed on 20.09.2024)

(1) This is an application moved by the respondent No.2 under Order XXIII Rule 1-A r/w. Order I Rule 10 of the Code of Civil Procedure (for short “C.P.C.”), seeking her transposition as the applicant instead of respondent No.2. It is contended that there is no conflict of interest between the applicant and the respondent No.2, even her grievances are very much proved whatever is raised by the applicant. Therefore, instead of arraigning in the array of respondent, she be transposed as an applicant since she has also suffered because of the compromise decree which is sought to be set aside through this civil miscellaneous application and the interest of the applicant as well as the respondent No.2 is the similar. The averments set out in the application are reiterated and it is pointed out as to how the compromise decree is collusive and obtained by fraud.

(2) The applicant by filing say at Exh.49 has virtually given his no objection and concurred with the contentions of the applicant/respondent No.2 that her interests are not contrary with the interests of the applicant and both have same grievances as regards to the compromise decree which is sought to be set aside and it is also contended that no prejudice will be caused to the applicant in case the prayer of the respondent No.2/applicant is allowed for her transposition as an applicant instead of respondent No.2 and it is, thus, prayed that accordingly, appropriate order be passed.

(3) Heard Mr. S. V. Peshve, the learned Advocate for the applicant/respondent No.2 and Mr. H. S. Wani, the learned Advocate for the applicant. None appeared for the co-respondent Nos.1, 3 and 4. Suffice to say that respondent No.4 proceeded ex parte.

(4) Perused the case-papers. The main grievance of the applicant is that the compromise decrees on 6th and 7th August 2007 have been obtained by practicing fraud on Court and therefore, they are assailed through this application and it is prayed that both the compromise decrees be set aside, by demonstrating how the fraud is played. Suffice here to say that as per the settled legal position, no suit shall lie to set aside the decree on the ground that compromise of which decree is passed, was not lawful. A decree which is obtained by playing fraud can only be questioned before the Court passing such consent decree to establish that there was no compromise in legal terms.

(5) In the case in hand, there is no conflict of interest in between the applicant and respondent No.2. She also claims that the decree of compromise referred above is obtained by playing fraud on the Court and it is collusive and she has also suffered because of the said compromise decree since her interests are also jeo pardised at par with the applicant. Therefore, she has to be added as co-applicant instead of co-respondent and thus, sought for transposition in view of Order X Rule 1-A of C.P.C.

(6) Considering the submissions, I am satisfied that there are bona fides on the part of the applicant and thus, she is rightly claiming her transposition as an applicant by deleting her name from the array of

respondents, as respondent No.2. Therefore, I am inclined to allow the prayer and accordingly, proceed to pass the following order ;

ORDER

- 1) Application Exh.45 is hereby allowed as under ;
- 2) The applicant/respondent No.2 is deleted as respondent No.2 and she be transposed as applicant No.2 instead, to prosecute the application at par with the applicant No.1.
- 3) In the circumstances, no order as to costs.
- 4) Applicants to amend the application, accordingly.

Date : 20.09.2024

(Dr. F. A. M. Khwaja)
District Judge-2, Dhule

Certificate

I certify that the contents of this PDF file is word to word as per original order.

Name of the Steno : I. S. Ansari
Name of the Court : District Judge-2, Dhule.
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