

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

Miscellaneous Petition No.1463/2021

(M/s. Dyna Chem
Proprietor Mahesh Kumar Punjabi s/o Ghuriyomal Punjabi
Versus
Jaipaldas Punjabi s/o Ghuriyomal Punjabi)

(Case was heard on 06.07.2021)

Counsel for the Parties : Shri Akash Rathi, learned counsel for the petitioner / defendant.
Shri Prateek Maheshwari, learned counsel for the respondent / plaintiff.

Whether approved for reporting : Yes

Law laid down :

(1) By no stretch of imagination can it be said that if the two suits are consolidated, it would save valuable time and energy of the court and the parties because in the suit for eviction, only judgement is to be declared whereas in the suit of declaration the entire evidence is still to be led by the parties which is likely to take sufficiently long time in the present scenario of COVID-19. In the considered opinion of this court, the only purpose that can be served by consolidating the suit of eviction with the declaration suit is that it would further delay the final disposal of eviction suit in which only the judgement is to be delivered.

Decisions Relied upon:-

Mahalaxmi Cooperative Housing Society Limited & others v. Ashabai Atmaram Patel through Legal Heirs & others reported as (2013) 2 SCC 404 (para 45).

(2) The narration of facts clearly reveals the tendency of the petitioner to misuse the process of the court at its pleasure by filing frivolous petitions one after the another so that to browbeat the trial court on the ground that the petition is pending before this court. In fact, this trickery was also tried on this court when it is submitted that the Supreme court has already issued notice in the SLP preferred by the petitioner which means there is some substance in the matter hence the stay is justified but this court condemns such practice. Even the Supreme Court, on many occasions, has clarified that mere issuance of notice does not, *ipso facto* becomes an order of stay.

This Court is of the considered opinion that there are two types of litigants, one, who do not know how to use the process of the court and to their own prejudice, shudder at

the very idea of getting into even a necessary litigation, and the other type is the one who know how to misuse the process of the court to its advantage and enter into unnecessary litigation by choice, such practice needs to be viewed strictly and has to be curbed with an iron hand.

Exemplary cost of **Rupees Two lakhs (Rs.200,000/-)** was imposed on the petitioner for blatantly misusing the process of the court.

Significant : 15 to 29
paragraph numbers

J U D G M E N T

(Case was heard on 06.07.2021)

Post for

26/07/2021

(SUBODH ABHYANKAR)
JUDGE

rcp

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Bench at Indore

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(M/s. Dyna Chem
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* * * * *

Shri Akash Rathi, learned counsel for the petitioner / defendant.
Shri Prateek Maheshwari, learned counsel for the respondent / plaintiff.

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ORDER

(Passed on this 26th day of July, 2021)

This miscellaneous petition under Article 227 of the Constitution of India has been filed by the petitioner / defendant against the order dated 08.03.2021 (Annexure P/1) passed in Civil Suit No.103-A/2016 by the Civil Judge Class-I Indore, District Indore (MP) whereby the petitioner's application filed under Section 151 of the Code of Civil Procedure, 1908 for consolidation of two suits has been rejected.

2. In brief, the facts giving rise to the present petition are that the respondent / plaintiff filed a Civil Suit No.103-A/2016 (Annexure P/3) for eviction of the petitioner / defendant in respect of Shop No.89 and 13-14, RNT Marg, Dawa Bazar, Indore.

3. The aforesaid plaint has been opposed by the petitioner / defendant by filing a written statement, traversing the averments made in the plaint and also stating that the plaintiff and the defendant are the real brothers, and the disputed property is purchased out of the funds of Joint Hindu Family Property. Hence,

another suit has also been filed by the petitioner / defendant (Mahesh s/o Late Ghuriyomal Punjabi) being Civil Suit No.1319-A/2019 for declaration of title over the aforesaid suit property, being a Member of the Joint Hindu Family Property. The aforesaid suit is pending and has been transferred by the District & Sessions Judge, Indore vide order dated 19.02.2021 passed in MJC No.44/2021 in the Court where the suit (Civil Suit No.103-A/2016) filed by the respondent / plaintiff is pending.

4. Since two suits between the same parties were filed in connection with the same property, the petitioner / defendant filed an application under Section 151 of the Code of Civil Procedure for consolidation of Civil Suit No.1319-A/2019 with the present Civil Suit No.103-A/2016, so that both the civil suits which belong to the Joint Hindu Family Property may be decided together. The aforesaid application filed by the petitioner / defendant came to be rejected by the Civil Court on 08.03.2021, which is under challenge before this Court.

5. Shri Akash Rathi, learned counsel for the petitioner has submitted that in both the cases, common question which is to be decided by the Court is regarding the ownership of the property; and in case, if they are not consolidated, it would give rise to unnecessary complications and multiplicity of the proceedings.

6. In support of his submissions, counsel has relied upon

the judgment of the Supreme Court in the case of **Premlal Nahata & others v. Chandiprasad Sikariya** reported as (2007) 2 SCC 551. Another cited judgment of the Supreme Court is in the case of **Mahalaxmi Cooperative Housing Society Limited & others v. Ashabai Atmaram Patel through Legal Heirs & others** reported as (2013) 2 SCC 404 in which the Supreme Court has held that in appropriate cases, consolidation is justified, as the purpose of consolidation is to save costs, time and effort; and also to obviate the multiplicity of the proceedings.

7. Shri Rathi has also submitted that the finding recorded by the learned Judge of the lower Court that both the suits are at different stages hence cannot be consolidated, is not a reason for not consolidating the two civil suits in which common issues are to be tried. It is further submitted that there is no legal restriction also, that the two suits having two different stages, cannot be consolidated.

8. A reply to the petition has also been filed by the respondent.

9. Shri Prateek Maheshwari, learned counsel for the respondent / plaintiff has vehemently opposed the prayer and it is submitted that the suit is at its final stage of delivering judgement and the petition is liable to be dismissed only on the ground that the material facts have been suppressed by the petitioner / defendant and the petitioner has also obtained an order of stay from this Court on

15.06.2021, that the final judgment may not be passed by the trial Court till the next date of hearing.

10. Counsel has submitted that there is history of litigation between the parties and this is not the first time that the petitioner has knocked the doors of this Court; in fact, there are as many as three petitions which have been filed by the petitioner before this Court challenging various interlocutory order (s) passed by the Court below. Against the order dated 11.09.2019 (Annexure R/1), passed by this Court in Miscellaneous Petition No.4293/2019 and Miscellaneous Petition No.4294/2019, the petitioner has also approached the Supreme Court in Petition (s) for Special Leave to Appeal (C) No.24937/2019, which is still pending, as the notices have been issued on 07.11.2019 (copy filed at page 37 & 38 of reply).

11. Thus, counsel has submitted that looking to the fact that Civil Suit No.103-A/2016 is at its fag end and in the earlier round of litigation, there are orders passed by this Court in Miscellaneous Petition No.4293/2019 dated 11.09.2019, directing the learned Judge of the trial Court to expedite the matter and conclude the same within a period of four months from the date of receipt of certified copy of the order passed and Miscellaneous Petition No.4294/2019 vide order dated 11.09.2019. Counsel has submitted that these orders have been brought to the notice of this court by the learned counsel for the

petitioner while obtaining stay order from this Court in the present matter on 15.06.2021; and thus, the petition is liable to be dismissed on this ground only.

12. On merits, counsel has submitted that the learned Judge of the trial Court has rightly observed that Civil Suit No.103-A/2016 which is an eviction suit is at its final stage of delivering the judgment only, as the parties have already been heard finally by the trial Court and only judgment is required to be delivered whereas, the other Civil Suit No.1319-A/2019 which is a suit for declaration, is at its preliminary stage. Hence, there is no point in consolidating the aforesaid two suits.

13. In rebuttal, Shri Akash Rathi, learned counsel for the petitioner / defendant has submitted that in SLP (C) No.24937/2019 arising out of order dated 11.09.2019 passed in Miscellaneous Petition No.4293/2019 and Miscellaneous Petition No.4294/2019, the Supreme Court has already issued notice and issuance of notice in itself is sufficient to assume that there is some substance in the petitioner's claim and thus, even if the stay order has been passed by this Court, the same is justified under the facts and circumstances of the present case.

14. Heard learned counsel for the parties and perused the record.

15. Admittedly, the Civil Suit No.103-A/2016 was filed in the year 2016 whereas the Civil Suit No.1319-A/2019 was filed after around three years on 16.12.2019. The application for consolidation of the suits was filed by the petitioner on 08.03.2021. It is rather surprising that it took almost one year and three months to the petitioner to realize that such an application for consolidation can also be filed. It is also found that earlier when due to non-deposit of rent, the defence of the petitioner/defendant was struck off, he preferred MP No.4293/2019 and MP No.4294/2019 which came to be dismissed vide the common order dated 11.09.2019 with the following observations: -

“The civil suit is of the year 2016 and all kind of delaying tactics have been adopted by the defendant, and therefore, the trial Court is directed to conclude the trial of the suit within a period of four months from the date of receipt of certified copy of this order. The trial Court will not grant any unnecessary adjournment in the matter and in case, need so arises in future for grant of adjournment, record reason for granting such adjournment.”

(emphasis supplied)

16. Subsequently, two other petitions viz. MP No.6931/2019 and MP No.6932/2019 and MP No.6933/2019 were also filed by the petitioner before this Court and these three petitions were also dismissed vide order dated 17.02.2020. The relevant paras of the same reads as under:-

“ In the present case, the Written Statement was filed in 2016, the issues were framed on 3/2/2017 and the application was filed in the year 2019 and keeping in

view Order 8 Rule 1 of the Code of Civil Procedure, 1908, as no reasonable cause was shown by the defendant, the trial Court has rejected the application.

This Court is of the considered opinion that the trial Court has rightly rejected the applications filed by the defendant and it appears that they have been filed only to delay the trial on some pretext or the other. This Court does not find any reason to interfere in the matter.

In the light of the judgment delivered in the case of **Shalini Shyam Shetty v. Rajendra Shankar Patil** reported in **2010 (8) SCC 329-2** by the apex Court, this Court is of the considered opinion that the order of the trial Court does not suffers from any patent illegality nor any jurisdictional error has been committed by the Court below. Accordingly, the admission is declined.

The other important aspect of the case is that two more petitions were preferred earlier ie., Misc. Petition No.4293/2019 and 4294/2019 by the same defendant again under Article 227 of the Constitution of India and they have also been dismissed on 11/9/2019, meaning thereby, during the pendency of the Civil Suit as many as five petitions have been filed by the defendant. This itself speaks volumes about the conduct of the defendant. The trial Court was earlier directed to conclude the trial within a period of 4 months and the same has not been done.

Resultantly, the trial Court is now directed to comply with the order passed by this Court and conclude the trial at the earliest.

With the aforesaid, the present petition is dismissed.”

(emphasis supplied)

17. Yet another petition MP No.1116/2020 was again filed by the petitioner but the same was also dismissed on 26.02.2020.

18. It is a matter of record that against the order dated 11.09.2019 passed by this court in MP No.4293/2019 dated 11.09.2019, SLP No.24937/2019 has been preferred by the petitioner before the Supreme Court in which notices have been issued on 07.11.2019 This court is not impressed with the arguments of Shri

Rathi that mere issuance of notice itself is enough for this court to stay the proceedings of the trial court.

19. So far as the question of consolidation of civil suits is concerned, the supreme court, in the case of **Mahalaxmi Coop. Housing Society Ltd.** (*supra*) has held as under: -

“45. We are also not much impressed by the argument of the learned Senior Counsel appearing for the respondent that the trial court has committed an error in not consolidating the various suits including Civil Suits Nos. 292 of 1993 and 681 of 1992 to be tried together as ordered by the District Court in its order dated 29-8-2006 in Civil Misc. Application No. 16 of 2005. Section 24 CPC only provides for transfer of any suit from one court to another. The court has not passed an order of consolidating all the suits. There is no specific provision in CPC for consolidation of suits. Such a power has to be exercised only under Section 151 CPC. The purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials. Reference may be made to the judgment of this Court in **Prem Lala Nahata** v. **Chandi Prasad Sikaria.**”

(emphasis supplied)

20. Thus, this court is required to see if the application filed by the petitioner falls within the scope of the aforesaid dictum of the Supreme court that the “*the purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.*”

Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials.”

21. In the present case, admittedly, the evidence has already been led by the parties and the case is fixed for delivery of judgement only. Meaning thereby that there is simply nothing more to be done in the present suit for eviction, whereas, the other suit which was filed in the year 2019 for declaration by the petitioner is in its preliminary stages only. In such circumstances, by no stretch of imagination can it be said that if the two suits are consolidated, it would save valuable time and energy of the court and the parties because in the suit of declaration the entire evidence is still to be led by the parties which is likely to take sufficiently long time in the present scenario of COVID-19. In the considered opinion of this court, the only purpose that can be served by consolidating the suit of eviction with the declaration suit is that it would further delay the final disposal of eviction suit in which only the judgement is to be delivered.

22. In view of the aforesaid discussion, this court is not inclined to interfere with the impugned order passed by the trial

court which does not appear to suffer from any patent illegality or jurisdictional error. As a result the petition, sans merits is hereby *dismissed*.

23. So far as the contention of Shri Maheshwari that there is suppression of facts on the part of the petitioner in filing this petition, as certain material orders passed by this court in the earlier round of litigation has not been brought to the notice of this court while obtaining the stay order is concerned, this court finds force with the contentions of Shri Maheshwari. On perusal of the orders passed by this court in MP No.4293/2019 dated 11.09.2019 and in MP No.6931/2019 dated 17.02.2020 which have been reproduce herein above, this court has no hesitation to come to a conclusion that had these orders been shown to this court on 15.06.2021, this court would certainly not have granted the stay order restraining the trial court to pass the final judgement. The contention of shri Rathi that these orders have no bearing on the case on hand is fallacious and is hereby rejected. In the considered opinion of this court if this court, in the earlier round of litigation, when it has directed the trial court to expedite the matter and dispose it of within a period of four months, in that case such order assumes importance and is of significance while granting stay of the proceedings. Not only that, the petitioner has also neither pleaded nor placed on record any earlier order passed by this court in the petitions filed by the

petitioner as also the order passed by this court in the MP No.6931/2019 on 17.02.2020 wherein also this court had reprimanded the petitioner and again directed the trial court to comply the earlier order and conclude the trial at the earliest. Similar is the situation with the other order passed by this court in MP No.1116/2020 which was dismissed by this court on 26.02.2020.

25. The aforesaid narration of facts clearly reveals the tendency of the petitioner to misuse the process of the court at its pleasure by filing frivolous petitions one after the another so that to browbeat the trial court on the ground that the petition is pending before this court. In fact, this trickery was also tried on this court when it is submitted by the counself for the petitioner that the Supreme court has already issued notice in the SLP preferred by the petitioner which means there is some substance in the matter hence the stay is justified but this court condemns such practice. Even the Supreme Court, on many occasions, has clarified that mere issuance of notice, does not, *ipso facto* becomes an order of stay.

26. This Court is of the considered opinion that there are two types of litigants, one, who do not know how to use the process of the court and to their own prejudice, shudder at the very idea of getting into even a necessary litigation, and the other type is the one who know how to misuse the process of the court to its advantage

and enter into unnecessary litigation by choice, such practice needs to be viewed strictly and has to be curbed with an iron hand.

27. In such circumstance, the petitioner being the second category of litigant is liable to pay the exemplary cost of **Rupees Two lakhs (Rs.200,000/-)** for blatantly misusing the process of the court. Out of the said amount of two Lakhs, **Rupees One Lakh** to be paid to the respondent/plaintiff Jaipaldas Punjabi in the trial court within a period of 2 (two) weeks from today, and, further **Rupees One Lakh** to be transferred / deposited in **Bank Account No.34872467662 (IFS Code : SBIIN0030528)** State Bank of India (30528) High Court Campus, MG Road, Indore-01 (MP) of **High Court Bar Association Advocate Welfare** within a period of **4 (four) weeks** from today and producing the receipt / certificate of the same before the concerned trial Court within one week from the date of deposit.

28. It is made clear that if the petitioner fails to comply with this order within the period, as prescribed, the trial court shall initiate action, in accordance with law for compliance of this order.

29. Needless to say, the learned Judge of the trial court shall conclude the trial, as directed by this court in earlier orders, as expeditiously as possible.

(Subodh Abhyankar)
Judge