

(2017) 08 BOM CK 0141

In the Bombay High Court

Case No : 200 of 2009 IN WRIT PETITION No 46 of 2009

M/s. Raviraj Corporation, Tilak Road, Akola, through its
Partner Rajendra Radhekishan Rathi

APPELLANT

Vs

The Maharashtra State Electricity Distribution Comp. Limited,
& Anr.

RESPONDENT

Date of Decision : 22-08-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Code of Civil Pro

Citation : (2017) 08 BOM CK 0141

Hon'ble Judges : B. P. Dharmadhikari, Arun D.Upadhye

Bench : DIVISON BENCH

Advocate : A.J. Gilda, R.E. Moharir, A.V. Bhide

Judgement

1. Appellant, added as defendant no.2 in Special Civil Suit No.5/1997 on 24.10.2008 by the Civil Judge, Senior Division, Khamgaon, questioned that order in Writ Petition No. 46/2009 before the learned Single Judge under Articles 226 and 227 of the Constitution of India. The prayers expressly seek a writ of certiorari or any other appropriate writ in the matter. In grounds, there is an attempt to demonstrate that against third party, such a relief could not have been allowed and scope of Order VIII Rule 23 of Civil Procedure Code, as amended by the Bombay High Court, has been lost sight.

2. Writ Petition No. 46/2009, was considered on 17.04.2009 for admission. In motion hearing, after hearing respective counsel, learned Single Judge of this Court has found no substance in the petition and dismissed it.

3. Shri Bhide, learned counsel appearing for the original defendant in Special Civil Suit/respondent no.2, has relied upon a judgment of Hon'ble Supreme Court reported at (2017) 5 SCC 533 (Ram Kishan Fauji .vrs. State of Haryana

and others), to urge that petition was essentially against an order interlocutory in nature, and hence, the petition or then the Letters Patent Appeal is not maintainable. He further adds that in any case, as held by the Hon''ble Supreme Court, present Letters Patent Appeal cannot be entertained.

4. Shri Gilda, learned counsel for appellant has pointed out that the petitioner before the learned Single Judge was not party to the suit, and effort to implead him was being opposed by approaching this Court in writ jurisdiction. He contends that therefore, Article 226 was rightly invoked and prayers were rightly made.

5. In alternative and without prejudice, he also submits that if this Court is inclined to hold that the Letters Patent Appeal is not maintainable, as petition filed under Article 226 with prayers for appropriate writ is required to be read and construed as one under Article 227 of the Constitution of India only, the observations of learned Single Judge should not be allowed to come in the way of the petitioner, if he is required to file any appeal under Section 96 of Civil Procedure Code.

6. In the light of judgment of the Hon''ble Supreme Court mentioned supra, it is apparent that as challenge was to an order passed by the Civil Court under Civil Procedure Code, present Letters Patent Appeal cannot be entertained and petition before the learned Single Judge is to be read as one under Article 227, invoking supervisory jurisdiction only.

7. In this situation, we dispose of this Letters Patent Appeal as not maintainable. However, we also make it clear that the observations made by the learned Single Judge in the order dated 17.04.2009 in Writ Petition No.46/2009, shall not be used while considering the challenge raised by the appellant in Appeal under Section 96 of the Civil Procedure Code, if any occasion therefor arise.

8. Accordingly with this clarification, we discharge Rule. No costs.