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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2939 OF 2017  
IN  
WRIT PETITION NO.14039 OF 2017**

Harish V. Milani ... Applicant

**IN THE MATTER OF WRIT PETITION BETWEEN**

Union of India ... Petitioner.

V/s.

Mr. Haresh V. Milani and anr ... Respondents

Mr. G. R. Sharma, for the Petitioner .

Mr. Nilesh Ojha, for the Respondents.

(for applicant in Application No.2939 of 2017)

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**CLOSED FOR ORDER ON : 17<sup>th</sup> APRIL 2018, 2018.**

**ORDER PRONOUNCED ON : 26<sup>th</sup> APRIL, 2018.**

**ORDER :**

1] Heard learned counsel for the petitioner and respondent, on a very short point, as to whether the Civil Application No.2939 of 2017, filed by respondent under Section 340 of the Code of Civil Procedure, has to be decided and enquired into first before the Writ Petition filed by petitioner under Article 227 of the Constitution of

India, which is challenging the order of amendment in the plaint, allowed by the trial Court.

2] According to learned counsel for respondent, as some false and misleading statements are made by the petitioner, to their own knowledge, in the Writ Petition, therefore, respondent has moved this Civil Application for taking action against the petitioner under Section 340 C.P.C. It is submitted that the writ petition can be decided as per law, only on the basis of result of the enquiry under Section 340 C.P.C. and therefore, this Application should be decided first.

3] Learned counsel for the petitioner, has however, denied that any false averments are made in the writ petition and submitted that the writ petition needs to be heard first as the proceeding before the trial Court are unnecessarily stalled. It is submitted that filing of such Civil Application is an attempt on the part of respondent to continue to be in unlawful possession of the suit land, as respondent knows that the hearing of the application filed under Section 340 C.P.C. which is though baseless and false, is going to consume time of this Court.

4] Learned counsel for respondent has, in support of his submission relied upon the judgment of Allahabad High Court, in the case of *Syed Nazim Husain -vs- The Additional Principal Judge Family*

*Court and anr in Writ Petition No.(M/S) of 2002*, wherein also similar point was raised as to whether the application under Section 340 C.P.C., has to be decided first before adjudicating the proceeding in which the said application was filed. By its order, Allahabad High Court has directed the trial Court to dispose of the application moved by petitioner under Section 340 C.P.C., before proceeding further in accordance with law.

5] Learned counsel for respondent has also relied upon the order dated 15<sup>th</sup> December, 2017, passed by this Court [Coram : A.S. Gadkari, J.], in Criminal Application No.728 of 2017; wherein also this Court has recorded the submission of learned counsel for respondent that his application preferred under Section 340 C.P.C, be heard first in point of time and accordingly adjourned the matter to 2<sup>nd</sup> February, 2018.

6] Learned counsel for respondent has then relied upon the judgments of Hon'ble Apex Court, in the cases of i] *Dalip Singh -vs- State of Uttar Pradesh [(2010) 2 SCC 114]*, ii] *Rameshwari Devi-vs Nirmala Devi [(2011) 8 SCC 249]*, and iii] *Kishore Samrite -vs- State of Uttar Pradesh[(2013) 2 SCC 398]*, holding that, "It is very well settled that a person whose case is based on falsehood has no right to approach the Court and he is not entitled to be heard on merits and he can be thrown out at any stage of the litigation.

