

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.265 OF 2014

Silver Jubili Infracture Ltd.,
through its Director
Sanjay Damodhar More,
Age 38 years, Occu. Business,
R/o ABC Complex, D-5,
3rd floor, Opp. to District Court,
Adalat road, Aurangabad

.. Petitioner
(Orig.Plaintiff)

Versus

1. M/s Ageis Medicines Pvt.Ltd.,
Through its Managing Director
Shri Ayyub Gaffar Sayed
Having its office at C-88,
M.I.D.C. Waluj, Aurangabad
2. Ayyub Gaffar Sayed,
Managing Director of respondent
No.1, Age Major, Occu.Business,
R/o C-83/83, N-1, Town Centre,
Behind Anupama Theater,
3. Ayesha Ayyed Syed,
Director of respondent No.1,
Age Major, Occu. and R/o as above

.. Respondents
(Orig.Defendants)

Mr P.F.Patni, Advocate for petitioner
Mr U.S.Undre, Advocate for respondents No.1 and 2
Respondent No.3 served through paper publication

CORAM : N.W. SAMBRE, J.

DATE : 24th February 2015

PER COURT

1. This petition is by original plaintiff questioning the legality and validity of order dated 7th December 2013 passed by 4th Joint Civil Judge, Senior Division, Aurangabad in Special Civil Suit No.415 of 2011.

2. The petitioner – original plaintiff filed a suit for recovery in which the evidence of plaintiff was over. In spite of repeated chances given to the defendants, the learned trial Court has proceeded to pass the order on 16th September 2013 which reads thus :

ORDER

“Application of defendant seeking adjournment is rejected vide Exh.156. So evidence of defendant is hereby closed and matter adjourned to argument on 19.9.2013”.

3. Subsequent thereto, though it appears that the matter was posted for final arguments, the defendants moved an application for issuance of witness summons which came to be granted by the learned trial Court by impugned order, as such the present petition.

4. Mr Patni, learned Counsel for the petitioner – plaintiff submits that the approach of the learned trial Court is contrary to the established procedure as laid down in Code of Civil Procedure. In support of his contention he relied upon the provisions of Rule 6 Order IX so as to submit that once the defendants have given an opportunity and they have failed to exhaust the same, it is not open for the defendants to apply afresh for issuance of witness summons. In support of his contention, he has invited attention of this Court to the order passed by learned trial Court on 16th September 2013.

5. Mr Undre, learned Counsel for respondents – defendants submits that the defendants have already produced/led their evidence in part. According to him, the explanation to Rule 2 of Order XVII of the Code of Civil Procedure empowers the learned trial Court to grant indulgence of permitting the defendants to led further evidence as a consequence whereof the order impugned is passed. He further submits that the suit being at the trial stage, learned trial Court has rightly exercised discretion in favour of the defendants.

7. While countering the above referred contentions, learned Counsel for the petitioner submits that the defendants have indulged in time killing activity and has sought to support the said contentions from the conduct of the defendants.

8. Having considered the rival contentions of the parties, this Court noticed that the learned trial Court initially rejected the application moved by the defendants for adjournment for production/leading their evidence, as is reflected in the order dated 16th September 2013. The said application was rejected by order passed below Exh.156.

9. Subsequent to the said rejection order, the learned trial Court has proceeded to pass the order on 16th September 2013 ordering that the evidence of the defendants is closed and posted the matter for arguments on 19th September 2013.

10. Subsequent thereto, it appears that the defendants have moved the present application for issuance of summons to the witness of the defendants on 5th December 2013. So far as the earlier conduct of the defendants is concerned, the order passed by the learned trial Court rejecting the application for adjournment by passing order below Exh.156 and ordering closure of evidence of defendants by order dated 16th September 2013 is not at all considered by the learned trial Court while passing the order dated 7th December 2013. It is required to be observed that in the light of above referred conduct of the defendants, explanation to Rule 2 of Order XVII of the Code of Civil Procedure will be of hardly any assistance to the defendants.

11. In the light of above, in my opinion, the order dated 7th December 2013 passed by the 4th Joint Civil Judge, Senior Division, Aurangabad passed below Exh.188, is not sustainable. As such, the same is hereby set aside and the application Exh.188 stands rejected.

12. For the reasons stated herein above, the writ petition stands allowed.

(N.W. SAMBRE, J.)

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