

(1)

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

**WRIT PETITION NO.3949 OF 2015**

Sumanta Ramrao Sutare (Chittekar),  
Age : 54 years, Occu. Service,  
R/o Prasannada Park,  
Raj Hills, Gut no.88,  
Row House no.14,  
Deoli Road, Beed-by-pass  
Tq. and Dist. Aurangabad

..PETITIONER  
(Ori. Defendant no.1)

VERSUS

1. Sarika w/o Raju Wadekar,  
Age : 38 yrs., occ. Service,  
r/o Tilak nagar, Aurangabad

..Ori. Plaintiff

2. Ganesh Babanrao Bagal,  
Age : 31 yrs. Occ. Business,  
r/o Ramnagar, Mukundwadi,  
Aurangabad

RESPONDENTS  
(Ori. Deft. No.2)

Mr Narendra D. Sonavane, Advocate for petitioner;  
Mr A.D. Kasliwal, Advocate for respondent no.1

**CORAM : N.W. SAMBRE, J.**  
**DATE : 7th December, 2015**

**ORAL ORDER :**

In Special Civil Suit No.591 of 2010, for specific performance, defendant no.1 moved application at Exh.84 on 14<sup>th</sup> January, 2015, seeking permission to reopen the evidence and examine the witnesses, with the list of documents filed below Exhs.69, 26/D and 48. A similar prayer was made only to the extent of exhibiting the document, by application at Exh.57. Both these applications are rejected. Thus, the present petition.

(2)

2. Learned Counsel appearing on behalf of the petitioner would urge that the documents which are sought to be proved by recording evidence, were already on record, in the form of photostat copies and the original thereof is sought to be produced when the matter was ready for final hearing. He would then urge that respondent no.1-plaintiff will not be taken by surprise, as the documents which are sought to be proved by summoning the witness, are already exhibited and are part and parcel of the record of the Court below. According to him, although there is delay, yet it was unintentional and the suit can be expedited by putting the petitioner to certain conditions.

3. Learned Counsel appearing on behalf of respondent no.1 – plaintiff would urge that if the prayer of the petitioner is granted by setting aside the impugned order, the same will result in permitting the petitioner to fill in the lacunae, which are left over during the conduct of the suit. According to him, since the suit has reached at the stage of final hearing, the powers either under section 151 or under Order XVIII, Rule 17 of the Code of Civil Procedure, cannot be invoked for recalling of the witness. He would then urge that the petition is liable to be dismissed.

4. Having considered rival submissions of the parties, the admitted fact, as is apparent from the record is that the documents which are sought to be proved by the present petitioner by recalling the witness, were already exhibited and are part and parcel of the record. In view thereof, it cannot be inferred that respondent no.1 – plaintiff will be taken by surprise. In addition to above, it is to be noted that respondent no.1 – plaintiff will be entitled to cross-examine the said witness and the evidence to that effect will be subject to further scrutiny by the Court while deciding the issue that is sought to be raised. However, this Court cannot overlook the conduct of the petitioner, who has moved the application at belated stage and, in my opinion, it will be appropriate to put the petitioner to certain conditions. The petitioner shall deposit costs of Rs.15,000/- before the learned Trial Court, within a period of two weeks from today. Since the suit is pending from

(3)

2010, parties hereto agree that they will co-operate the Trial Court in expeditious disposal of the suit. I, therefore, pass following order :-

The orders dated 1<sup>st</sup> January, 2015 and 4<sup>th</sup> February, 2015, passed by Civil Judge Senior Division, Aurangabad, below Exhs.83 and 84, respectively, in Special Civil Suit No.591 of 2010, are set aside and applications at Exhs.83 and 84 stand allowed, subject to payment of costs of Rs.15,000/- to be deposited by the petitioner before the Court below, within a period of two weeks from today.

Learned Trial Court shall endeavour to decide the suit as expeditiously as possible, and in any case, within a period of two months from today.

Writ Petition stands allowed in above terms.

**(N.W. SAMBRE, J.)**

amj