

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

WRIT PETITION NO. 5915 OF 2015

Babasaheb Bhimraj Shinde
Age: 42, Occu- Agriculturist & Service
R/o. Panaswadi, Tal. Newasa,
Dist. Ahmednagar

...Petitioner
(Orig. Plaintiff)

Versus

- 1) Shanaishwar Devasthan Trust, Shingnapur
Tal. Newasa, Dist. Ahmednagar, through
Secretary Sanjay Mohan Bankar
- 2) Raosaheb Sukhdev Bankar,
Age: 52, Occu-Agriculturist,
President of Shanaishwar Devasthan Trust,
Shingnapur, Tal. Newasa,
Dist. Ahmednagar

...Respondents/
(Original defendants)

Mr. Zafar M. Pathan, Advocate for petitioner
Mr. S. D. Kotkar, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
3RD JULY, 2015

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard the parties finally, by consent.
2. This writ petition has been moved by original plaintiff, aggrieved by order dated 02-05-2015 on Exhibit-106 in Regular Civil Suit No. 389 of 2005 passed by Joint Civil Judge, Junior Division, Newasa, whereunder his request to examine Executive Engineer, Mula Irrigation Division, Ahmednagar, Assistant Engineer (Grade-II), Irrigation Branch No.1, Ghodegaon and two advocates Mr. J. R.

Dahatonde and Mr. P. C. Nahar who acted as Commissioners in the matter, has been turned down.

3. The request of the plaintiff has been turned down predominantly on the ground that it was belated one, after closure of evidence on either side and also looking at the resistance by defendants to the request.

4. Perusal of the pleadings shows that both the parties relate the property to be concerned with the irrigation department.

5. In order to support his claim, the plaintiff wants to examine the Executive Engineer. At the same time, it is the case of defendants that the irrigation department had allowed them to have borewell in the land in question. The court has considered that none of the parties had, in fact, examined the Executive Engineer. Perusal of the order impugned shows that the plaintiff has sought permission for examination of the Executive Engineer as witness, however, while the opportunity was available earlier, no such effort had been made by him.

6. However, looking at that though the matter is pending since 2005, since the subject-matter of the dispute appears to be concerned with irrigation department, examination of Executive Engineer would not be absolutely irrelevant and may, to a certain extent, be expedient as it may go a long way in resolving controversy involved.

7. Taking into aforesaid, I think it would be in the interest of justice that the request under Exhibit-106 be considered and inconvenience caused to the other side can be mended by awarding suitable costs.

8. I, therefore, allow the writ petition and set aside order dated 02-05-2015 on Exhibit-106 in Regular Civil Suit No. 389 of 2005 passed by learned Joint Civil Judge, Junior Division, Newasa. Application Exhibit-106 stands restored. Request under Exhibit-106 be decided as expeditiously as possible, preferably within a period of two months from the date of receipt of writ of this order. No adjournments be granted on technical grounds. Inconvenience in the process being caused to the defendants shall be compensated by imposition of costs of Rs.10,000/-. Costs be deposited in the trial court for being paid to the defendant within a period of four weeks from the date of receipt of writ of this order.

9. Rule made absolute accordingly.

SUNIL P. DESHMUKH, J.

pnd