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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7504 OF 2014

1. Vidya w/o Shashikant Patil (Lavand) PETITIONERS
Age - 38 years, Occ - Agriculture & Household
R/o AUSA, Taluka - AUSA
District - Latur
2. Rajabhau s/o Bhanudas Mane
Age - 42 years, Occ - Business,
R/o Bhoisamudraga,
Taluka and District - Latur
3. Rama s/o Nama Gaikwad
Age - 70 years, Occ - Agriculture
R/o Khorli Galli,
Taluka and District - Latur

VERSUS

Kerba s/o Pandurang Gaikwad RESPONDENT
Age - 70 years, Occ - Agriculture
R/o Lodaga, Taluka - AUSA
District - Latur

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Mr. Sachin S. Panale, Advocate for the petitioners
Mr. Amol S. Sawant, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 1st SEPTEMBER, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioners take exception to order dated 12th August,

2014 on Exhibit-99 in Regular Civil Suit No. 47 of 2012 (This is a new number, the suit has been originally filed in the year 2009) whereunder the trial court declined to accept the request of the petitioners to allow them to cross-examine witnesses of the plaintiff.

3. After hearing learned advocates for the parties, it appears that despite several opportunities coming the way of the petitioners, for one reason or the other or on one pretext or the other, they have not cross examined plaintiff's witnesses, who have put in their examination in chief on affidavits, way back in 2010. The trial court has referred to the conduct of the present petitioners in paragraph No.3 of the impugned order and as such, went on to reject the request under application Exhibit-99, by imposing costs on various counts, aggregating to Rs.7,500/-, further giving its apportionment.

4. Learned advocate for the petitioners earnestly urges this court to take a lenient view in the matter and further refers to that an advocate from Latur town had been engaged to conduct proceedings in the court at AUSA and that he had been running from pillar to post in order to attend to the proceedings and to arrange for his appearance. He, further assures that henceforth

there would not be any laxity and it would be seen that the witnesses concerned would be cross-examined within four weeks. He further submits that this court had directed the petitioners to deposit an amount of Rs.35,000/- in order to show their *bona fides* giving an indication that the matter may be considered leniently. This sum, according to learned advocate for the petitioners has been deposited in addition to the costs awarded by the trial court under the order on Exhibit-99. He submits that in aggregate, an amount of Rs.42,500/- had been deposited by the petitioners in the trial court.

5. Mr. Sawant, learned advocate appearing for the respondent submits that there is huge delay of about four years, the proceedings in the trial court are being conducted very casually and as such, no leniency should be shown to the persons, who have no regard to the court proceedings. He, therefore, submits that the petition does not deserve any consideration. He alternatively submits that in case the court is inclined to grant the writ petition, the petitioners be put to strict conditions obligating them to conduct cross examination of plaintiff's witnesses within a stipulated period and he further makes a fervent appeal for directions for disposal of the suit expeditiously, which has been pending since 2009.

6. Having regard to aforesaid and further that an assurance is being given by the petitioners that they would cross examine the plaintiff's witnesses within a period of four weeks from the date of receipt of writ of this order, under the jurisprudence as the trial on merits is its hallmark and in order not to leave this deficiency bounce back upon the respondent, I deem it appropriate in the interest of justice that the writ petition be given lenient treatment and the inconvenience caused in the process to the respondent be compensated by awarding costs. The trial court has already granted costs of Rs.5000/- to be paid to the respondent by an order on Exhibit-99 and this Court had directed the petitioners to deposit an amount of Rs.35,000/- in the trial court. In view of the same, amount in aggregate of Rs.40,000/- be appropriated towards costs to be paid to the respondent.

7. Having regard to the aforesaid, writ petition stands allowed in terms of prayer clause "B", on the condition that the petitioners shall cross examine the plaintiff's witnesses pursuant to Exhibit-99 within a period of four weeks from the date of receipt of writ of this order. The trial court shall proceed with the suit as expeditiously as possible and may dispose of the same

within a period of eight months from the date of receipt of said writ. As such, the respondents are allowed to withdraw the sum of Rs.40000/- from the trial court. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]

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