

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

WRIT PETITION NO. 11697 OF 2014

Rajendra Ambadas Jamdade ... Petitioner

Versus

Sandeep Madhukar Jamdade
& others ... Respondents

.....
Mr. Mohit Deshmukh, Advocate holding for
Mr. S.G. Chapalgaonkar, for petitioner
Mr. K.R. Doke, Advocate for respondent No. 6

.....

CORAM : RAVINDRA V. GHUGE

DATED : 14th JANUARY , 2015

PER COURT :

1. Heard the learned Advocates for the respective sides for quite some time.
2. Issue is as regards the orders dated 08-10-2014 passed below Exhibit 116 filed by the petitioner whereby permission to adduce evidence was denied and the order dated 16-10-2014 passed below Exhibit 117 by which the request of the petitioner to recall the 'Closing evidence' order dated 01-10-2014, was rejected.

3. This suit is filed in the year 2009. On 24-09-2014, defendant Nos. 2 & 3 have closed their oral evidence. Petitioner is defendant No. 4. Matter was posted on 01-10-2014 for the petitioner to adduce oral evidence. Since it was not so done, the Trial Court passed an order of closing the evidence of the petitioner. It is in these circumstances that applications Exhibit 116 and 117 were filed on 08-10-2014 and both have been rejected by order dated 08-10-2014 and 16-10-2014.

4. The petitioner submits that the suit is proceeding without the written statement of the petitioner. Nevertheless, the petitioner has a right to lead evidence. Though the order was passed on 01-10-2014 which was the first date after the defendant Nos. 2 & 3 closed their evidence, the petitioner has filed applications Exhibit 116 and 117 in all promptitude on the 8th day from the passing of the order.

5. The impugned order is cryptic in nature and the applications have been rejected only because the matter is said to be old and cannot be kept pending. The petitioner is further aggrieved by the conclusion of the Trial Court that he has no locus-standi to file an application for leading the evidence.

6. The learned Advocate for the respondent strenuously supported the impugned order. He points out that an application Exhibit 120 dated 10-11-2014 has been filed by the petitioner seeking recalling of the no written statement order passed on 05-12-2009. The said application has been rejected by the Trial Court on 10-11-2014. He, therefore, submits that the petitioner/defendant No. 4 is hands in gloves with the plaintiff and they are deliberately trying to prolong the matter. He, therefore, prays for the dismissal of the petition.

7. I find that the application Exhibit 116 has been filed on 08-10-2014 seeking time to lead oral evidence. Application Exhibit 117 has been filed for seeking the recalling of order of no evidence dated 01-10-2014. The petitioner makes a statement that on the first approaching date in the proceedings, the petitioner would file an affidavit in lieu of his examination -in-chief and will not seek an adjournment. In so far as cross-examination is concerned, he shall remain present on every date before the Trial Court and subject himself to cross-examination.

8. As such, this Writ Petition is partly allowed. The impugned orders dated 08-10-2014 and 16-10-2014 are quashed and set aside. Application Exhibit 116 and 117 stand allowed subject to

payment of costs of Rs. 7,000/- (Rs. Seven thousand only) to be deposited before the Trial Court within a period of three weeks from today and the said amount shall be withdrawn by the respondents in this petition in equal proportions without conditions.

9. Needless to state, the petitioner shall lead his evidence in his capacity as defendant No. 4 on the first approaching date and shall subject himself to cross-examination on all such dates on which the Trial Court shall post the matter. Since the suit is of the year 2009 and the parties prayed for expeditious hearing of the suit, the Trial Court is at liberty to decide the said suit as expeditiously as possible. The litigating parties shall cooperate with the Trial Court and shall refrain from seeking unnecessary adjournments in the matter.

(**RAVINDRA V. GHUGE, J.**)