

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10502 OF 2014

NANDAKUMAR GOPALRAO BENDALE

PETITIONER

VERSUS

RAMSINGH NARAYAN PATIL, LR'S RATNABAI
RAMSINGH PATIL AND OTHERS

RESPONDENTS

Mr.Sanket S.Kulkarni, Advocate for the petitioner.

Mr.Girish S. Rane, Advocate for respondent Nos. 1 to 4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/03/2015

PER COURT :

1. On 09/12/2014, while issuing notice, the following order was passed :-

"1 The petitioner is the original defendant No.4 in RCS No.501/2012. An affidavit in lieu of examination in chief has been filed below Exh.121 on 5.4.2014. The defendant No.5 had also preferred an affidavit in lieu of examination in chief.

2 The respondents herein who are original plaintiffs have raised an objection vide application Exh.123 dated 18.4.2014 by which the examination in chief of the petitioner has been opposed. Prayer was made that application Exh.123 be heard and decided before the commencement of cross examination of the petitioner. It is stated that as yet, the trial Court has not passed any order on Exh.123.

3 By order dated 10.9.2014, the Trial Court has passed an order on the affidavit filed by the 5th defendant observing that, “ since from five months, defendants No.4 and 5 are absent, hence, their affidavits are filed.”

4 The petitioner, therefore, moved an application Exh.125 on 7.10.2014 seeking recalling of the said order so as to enable the petitioner to proceed with recording of his evidence. By a cryptic order dated 7.10.2014 which is impugned in this petition, the trial Court rejected application Exh.125 by observing, “ Heard Counsel. Application is having no substance. Hence rejected.”

5 Issue notice before admission to respondents No.1 to 4, since the petitioner contends that they are the contesting parties and notices need not be issued to respondents 5 to 10 at this stage. Notices are made returnable on 27.1.2015. Till the next date of hearing in this matter, the trial Court shall not proceed with RCS No.501/2012.”

2. I have heard the learned Advocates for the respective sides. An unreasoned and cryptic order has been passed on 07/10/2014, thereby rejecting application Exh.125.

3. Affidavit in lieu of examination-in-chief has been filed by the

petitioner/defendant No.4. The right to lead evidence cannot be taken away by passing a cryptic order. Nevertheless, petitioner/defendant No.4 has filed an affidavit in lieu of examination-in-chief at Exh.121. However, the order dated 10/09/2014, has been passed on the affidavit filed by defendant No.5 as observed in paragraph No.3 of the order reproduced above.

4. In view of the fact situation, the impugned order dated 07/10/2014 is quashed and set aside. Mr.Rane, learned Advocate appearing on behalf of respondent Nos. 1 to 4 submits that he would proceed to cross examine respondent No.4, provided the petitioner presents himself on the first approaching date in Spl.C.S.No.501/2012.

5. Both the learned Advocates submit that prior to the commencement of the cross examination, a pending application Exh.123, filed by the respondents herein, will have to be decided.

6. As such, this writ petition is allowed. Impugned order dated 07/10/2014 passed below Exh.125, is quashed and set aside. The Trial Court is at liberty to decide application Exh.123. The petitioner

shall keep himself present for cross-examination before the Trial Court and shall not seek an adjournment pursuant to the Trial Court deciding application Exh.123.

7. The litigating parties have submitted that though Spl.C.S.No.501/2012 may appear to have been preferred in 2012, the suit was pending registration and as such the litigating parties are suffering rigours of litigation from 1998 onwards. In the light of the said statement, the Trial Court shall decide Spl.C.S.No.501/2012 as expeditiously as possible. The litigating parties shall not seek adjournments on unreasonable or frivolous grounds.

(RAVINDRA V. GHUGE, J.)