

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11725 OF 2014

Vishwas Madhukar Adkar

PETITIONER

VERSUS

Bhagwan Ramchandra Adkar and others

RESPONDENTS

Mr.P.S.Pawar, Advocate for the petitioner.

Mr.Amol S.Gandhi, Advocate for respondent No.3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/01/2015

PER COURT :

1. I have heard the learned Advocate for the petitioner Mr.Pawar and Mr.Amol Gandhi for the caveator/respondent No.3. Though the copy of the petition is not served on the caveator, he has graciously assisted the Court.

2. The issue is as regards application Exh.100 for appointment of Court Commissioner. The said application has been filed by respondent No.3 herein, who is the original defendant No.3. Respondent No.1 who is the plaintiff, consented to application Exh.100. The petitioner is aggrieved by a cryptic order dated 18/11/2014 passed by the Trial Court thereby allowing application

Exh.100.

3. Grievance of the petitioner in short is that though application Exh.100 was filed, copy was not supplied to the petitioner / defendant No.1 on the said date 30/08/2014 as well as on 20/09/2014. On 18/11/2014, the application was allowed vide the impugned order. The petitioner moved an application Exh.104 seeking copy of Exh.100 and revoking of the order dated 18/11/2014. The said application has also been rejected on 18/11/2014 on the ground that the petitioner did not furnish his say to application Exh.104.

4. Mr.Gandhi, learned Advocate has specifically stated that when application Exh.100 was filed, the plaintiff as well as the other defendants, barring the petitioner, have filed their say. It is only the petitioner who did not file his say and sought a copy of Exh.100 only after the impugned order was passed.

5. Mr.Gandhi further submits that in the Trial Court, when such applications are filed, the other side is expected to submit its say on the said application. The petitioner / defendant No.1 neither sought a copy of the said application nor did he file his say on the said

application. He has watched defendant No.3 filing the application and which was not opposed by the original plaintiff. Only because the order is passed against him, the petitioner is now making a grievance against the impugned order.

6. Having heard the learned Advocates, I find from the Roznama, which is placed on record that the stage in the matter was for recording of evidence. The application Exh.100 indicates that the parties were likely to settle the matter and measurement sought was to assist the parties in arriving at such a settlement. The said application Exh.100 is filed by defendant No.3 and the original plaintiff has not objected to it. The petitioner / defendant no.1 did not file his say since the parties were likely to settle the matter.

7. On the adjourned date pursuant to filing of Exh.100, i.e. 20/09/2014, the plaintiff sought an adjournment and defendant No.3 sought time to engage a new Advocate. The petitioner, therefore, submits that he was under an impression that the matter is getting adjourned and hence did not take any steps. On 18/11/2014, by the time he made a request to the Court, application Exh.100 was allowed. Therefore, application Exh.104 was filed and the same was also rejected.

8. As regards failure on the part of the petitioner to file his say, it appears that the petitioner has neither sought for a copy of the application Exh.100, nor has he submitted his say thereupon. After the Trial Court passed the impugned order dated 18/11/2014 on application Exh.100, the petitioner became alert and moved an application making a grievance that he desired to file say to application Exh.100 and that would have been possible only after a copy was given to him.

9. I am causing an interference in the impugned order only for the reason that the impugned order is without any reasons and is cryptic. The said order is as follows :-

"Application is allowed. TILR Aashti is appointed as a Court Commissioner and he is directed to file his report R/o 05/01/2014, notwithstanding the no objection granted by the plaintiff."

10. The Trial Court was expected to pass a reasoned order. Appointment of a Court Commissioner is not a mere formality. Similarly, only because the plaintiff may have consented to the appointment of the Court Commissioner, would not mean that the

Trial Court should allow such application without any reasons and without considering the contentions made in the application. The manner in which application Exh.100 has been allowed, cannot be appreciated.

11. In the light of the above, the impugned order dated 18/11/2014 is quashed and set aside. Consequentially, the order dated 18/11/2014 below Exh.104 also stands set aside. The Trial Court is directed to hear the petitioner alongwith other litigating parties on application Exh.100 and decide the said application afresh. It is expected that the Trial Court will assign reasons to its conclusions while deciding an application Exh.100. The petitioner will file its say to application Exh.100 within 3 (three) weeks from today.

12. Needless to state, this Court has not considered the merits of the matter and therefore the Trial Court shall decide application Exh.100 on its own merits and in accordance with Law. At the same time, the laxity on the part of the petitioner cannot be countenanced without imposing costs. As such, the petitioner shall deposit costs of Rs.10,000/- before the Trial Court in RCS No.96/2010 within 3 (three) weeks from today. The plaintiff and defendant No.3 shall withdraw the said amount in equal proportions. Application Exh.100

shall be decided as expeditiously as possible and preferably within a period of 6 (six) weeks from today.

13. In the light of the above observations and directions, this petition is partly allowed.

(RAVINDRA V. GHUGE, J.)