

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO. 21913 OF 2014

Late Sarjerao Sitaram Chand
since deceased through his legal heirs
Alka S. Chand & Ors. .. Petitioners
VS.
Balasaheb Bhairu Darvi & Anr. .. Respondents

Mr. Umesh H. Pawar for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 08 MAY 2015

P.C. :-

1] The learned counsel for the petitioners files affidavit of service indicating that service is complete upon the respondents.

2] This Court had made an order on 5 September 2014 putting the parties to the notice that this petition will be disposed of finally at the stage of admission. Further, the petitioners were directed to deposit an amount of Rs.3,000/-, which the learned counsel for the petitioners states, has been deposited.

3] In paragraph 1 of the order dated 5 September 2014, this Court has observed as follows:

"The order closing the evidence of the Petitioners / original Plaintiffs is taken exception to by way of the above Petition. The said order has been passed, as on the date when the said order was passed and even prior thereto, no appearance

was put up on behalf of the Petitioner. It is the case of the Petitioner that on account of his indisposition that he did not attend the Court. The learned Counsel appearing for the Petitioner Shri Pawar states that the Petitioner intends to examine only two more witnesses i.e. the officials of the MSEB and the Zilla Parishad and no further witness. The learned Counsel therefore prays that one last indulgence may be shown to the Petitioner. Hence, issue, notice to the Respondents, returnable on 26th September, 2014."

4] The impugned order, closing the evidence of the petitioners appears to be harsh, particularly considering the circumstance that the petitioners witness could not remain present on account of ill health. Accordingly, the impugned orders dated 7 March 2014 and 19 June 2014 are set aside. All this shall be subject to the payment of costs of Rs.3,000/- (Rupees Three Thousand) to the respondent no. 1 i.e. Shri Balasaheb Bhairu Davri, within a period of six weeks from today.

5] Since, the respondents, despite notice, have not appeared in this Court, the petitioners or their Advocate Mr. Umesh Pawar are at liberty to withdraw the sum of Rs.3,000/- deposited in this Court and thereafter either pay to the respondent no. 1 or deposit in the trial Court the said sum of Rs.3,000/-. Upon deposit, the respondent no. 1 Shri Balasaheb Bhairu Davri, shall be at liberty to withdraw the said amount unconditionally.

6] As recorded in the order dated 5 September 2014, the petitioners to stand by their statement that they shall examine only two more witnesses i.e. the officials of the MSEB and the Zilla Parishad and no further witnesses.

7] Since the suit is of the year 2009, the learned trial Court is directed to dispose of as expeditiously as possible and in any case within a period of one year from today.

8] Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs in the present petition.

9] All concerned to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka