

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9712 OF 2014

Dattatray Macchindra Latne

.. Petitioner

Versus

Ashok Macchindra Latne and another

.. Respondents

Mr. V. B. Tapkir a/w Mr. J. S. Yadav, for the Petitioner.

Mr. M. B. Deshmukh, for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 15th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 05.09.2014 passed by the Learned 2nd Joint Civil Judge, Senior Division, Sangli, by which order the Application Exh.57 filed by the Plaintiff for permitting him to adduce the evidence of one more witness came to be rejected. It appears that the suit was kept on 07.03.2014 for the Plaintiff to adduce his evidence. However, it seems that the Plaintiff sought an adjournment on the ground that witness is not present. Hence, the suit was thereafter kept on 28.03.2014, on which day also it was the case of the Plaintiff that since the bus was running late he could not contact his advocate and that his witness for reasons beyond his control could not remain present. The Trial Court accordingly passed an order on

28.03.2014 closing the evidence of the Plaintiff. The Plaintiff on the very same day i.e. on 28.03.2014 filed the instant Application Exh.57 for setting aside the order of closure of evidence and permitting the Plaintiff to lead evidence. The said application was rejected on the ground that he has neither submitted the evidence by way of an affidavit or kept the witness present before the Court. The reasons why the witness could not be kept present in the Court are mentioned in the Application Exh.57. Though the Learned Counsel appearing on behalf of the Defendant Mr. M. B. Deshmukh sought to vehemently oppose the grant of any opportunity to the Plaintiff to lead further evidence, in my view, the interest of justice requires that the Plaintiff be allowed to complete his evidence by giving him a final opportunity to do so. The impugned order dated 05.09.2014 is accordingly quashed and set aside and resultantly, the Application Exh.57 would stand allowed. Hence, the following directions are issued :-

I) The Petitioner/Plaintiff would file affidavit of evidence and keep his witness by name Bhagwandas Nanakwani present in the Court on 29.09.2015.

II) The Defendant would be entitled to cross-examine the said witness of the Plaintiff as also the other witnesses, if the cross-examination has not been carried out by the

Defendants thus far.

III) If the Plaintiff does not file his affidavit of examination-in-chief or does not keep the witness present on 29.09.2015 the right to adduce evidence of the said witness Bhagwandas Nanakwani would stand forfeited and the Plaintiff's evidence would resultantly stand closed. With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.