

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9938 OF 2015

Mr. Shabbir Khajumiya Rangari.] ... Petitioner

Versus

1. Smt. Sonabai Vitthalrao Mirajkar]
 (Since Deceased through her legal]
 representatives)]
 1A. Shri Kiran Balaji Mirajkar,]
 1B. Shri Pravin Munuswami Mirajkar and]
 2. Mr. Pravin Devichand Khandelwal.] ... Respondents

Mr. T. D. Deshmukh for Petitioner.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 09, 2015

P. C. :-

1. This petition challenges order dated 15/11/2014, by which the Revisional Court has permitted the respondent nos.1A and 1B-plaintiffs to file additional affidavit in lieu of examination-in-chief.

2. Mr. Deshmukh, learned Counsel for petitioner, after reference to the chronology or events, has submitted that there was no case made out by the respondent nos.1A and 1B-plaintiffs to file additional affidavit in lieu of examination-in-chief and the indulgence

granted is in excess of jurisdiction. He submitted that after the petitioner filed/amended his written statement, the respondent nos.1A and 1B-plaintiffs, on 13/03/2014, filed affidavit in lieu of examination-in-chief. This affidavit itself was in addition to the one filed earlier. Thereafter on 14/03/2014, there was absolutely no justification in seeking to file yet another additional affidavit in lieu of evidence in the matter. The entire attempt on the part of the respondent nos.1A and 1B-plaintiffs is to fill in the lacunae in the previous affidavit and this is clearly impermissible. For all these reasons, Mr. Deshmukh submitted that the impugned order dated 15/11/2014 is liable to be interfered with. Mr. Deshmukh also submitted that in making the impugned order dated 15/11/2014, the Revisional Court has not considered the impacts of the order dated 09/09/2014 made by the Trial Court in the meanwhile, whereby, the affidavit filed by the respondent nos.1A and 1B-plaintiffs on 11/08/2014 was discarded.

3. Having heard the learned Counsel for petitioner, in my judgment, there is no jurisdictional error in the making of the impugned order. In this case, the petitioner had failed to file the written statement within the prescribed period. Therefore, the respondent nos.1A and 1B-plaintiffs had proceeded to file the affidavit in lieu of examination-in-chief. Thereafter, delay in filing the written statement was condoned and the petitioner was offered an opportunity to file written statement. In the same order, opportunity was also granted to the respondent nos.1A and 1B-plaintiffs to file

additional affidavit in lieu of examination-in-chief, particularly, in the context of the averments in the written statement made by the petitioner. The petitioner filed the written statement sometime in October 2010 but chose to amend the same on 24/02/2014. In these circumstances, and no sooner thereafter i.e on 13/03/2014, the respondent nos.1A and 1B-plaintiffs filed additional affidavit in lieu of examination-in-chief. On the immediate next day i.e. on 14/03/2014, the respondent nos.1A and 1B-plaintiffs filed yet another affidavit in lieu of examination-in-chief. It was submitted by the respondent nos.1A and 1B-plaintiffs that both these additional affidavits in lieu of examination-in-chief are in consonance of the opportunity granted to them at the stage when the petitioner was permitted to file written statement/amended written statement.

4. Technically, the learned Counsel for petitioner is right that since the additional affidavit in lieu of examination-in-chief was filed on 13/03/2014, there was no occasion to file yet another written statement on 14/03/2014. However, permitting the filing of yet another additional affidavit on the immediate next date i.e. 14/03/2014, can hardly be described as some jurisdictional error. It is possible that some averments remained to be dealt with in the affidavit filed on 13/03/2014. If therefore, on the immediate next date the respondent nos.1A and 1B-plaintiffs filed yet another affidavit in lieu of examination-in-chief and the same is permitted, the same, cannot be held to be some jurisdictional error. In fact, such leave hardly occasions any prejudice to the petitioner. Besides, such leave has to be

considered in the context of the petitioner himself not filing the written statement within time and therefore, amending the written statement almost three years after the same was thereafter filed.

5. The order made by the Trial Court on 09/09/2014 really premised upon its earlier order dated 11/06/2014. The order dated 11/06/2014 having been set aside by the Revisional Court by the impugned order dated 15/11/2014, there is no question or the order dated 09/09/2014 surviving any longer. As such, there was no question of the Revisional Court considering the impact of the order dated 09/09/2014 at the stage of making the impugned order dated 15/11/2014.

6. This is not a case which warrants interference in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India. There is no jurisdictional error in the making of the order. The petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)