

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 941 OF 2014**

Shri Prakash Baburao Pawar

Petitioner

Vs

1. Smt. Saraswati Dnyaneshwar
Pawar and Ors.

.. Respondents

Ms. Manjiri S. Parasnis, Advocate for Petitioner.

Mr.Vivek V. Salunke, Advocate for Respondents no. 1 and 2.

CORAM : R.G.KETKAR,J.

DATE : 15/12/2015

PC:

1. Heard Ms. Manjiri Parasnis, learned counsel for the petitioner and Mr. Vivek Salunke, learned counsel for respondents no. 1 and 2 at length. Ms. Parasnis submits that respondents no.1 to 6 are only contesting respondents, being original plaintiffs. She has filed affidavit of service indicating service on respondents no.3 to 6. Despite service, none appears for respondents no.3 to 6.

2. Rule. Mr. Salunke waives service on behalf of respondents no.1 and 2. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, original defendant no.6 has challenged orders dated 19.11.2012 and 11.9.2013 passed by the learned 3rd Addl. Judge, Small Causes Court, Pune in Special Civil Suit No. 674 of 1993.

By order dated 19.11.2012, the learned trial Judge closed the evidence of the petitioner, hereinafter referred to as 'defendant no.6' and ordered suit to proceed further. Defendant no.6 filed application Exhibit 444 for recalling the order dated 19.11.2012. By order dated 11.9.2013, the learned trial Judge rejected the application.

4. Ms. Parasnis submitted that defendant no.6 filed application Exhibit 439 on 6.7.2012 for dismissal of the suit on the ground that the plaintiffs are consistently remaining absent. Roznama of 28.9.2012 shows that the plaintiffs and the defendants' Advocates were absent and the suit was adjourned for evidence of defendants no.1 to 4 and 6. Roznama of 11.10.2012 shows that the plaintiff's Advocate was absent and defendants' Advocate was present. On the oral request, the suit was adjourned to 29.10.2012 for evidence of defendants no.1 to 4 and 6. Roznama of 29.10.2012 shows that the plaintiff's and defendants Advocates were absent and it was adjourned to 19.11.2012 for evidence of defendants no.1 to 4 and 6. On 19.11.2012 the plaintiff's Advocate was absent. It appears that on that date purshis Exhibit 441 was filed for closing the evidence. The learned trial Judge thereafter proceeded to pass order of closing evidence of defendant no.6.

5. Ms. Parasnis submitted that defendant no.3 filed purshis for closing evidence on 4.2.2013. Defendants no.1 and 2 filed

purshis for closing evidence on 22.2.2013. She submitted that from 28.9.2012 till 19.11.2012 suit was adjourned for leading evidence by defendants no.1 to 4 and 6. She submitted that defendant no.6 was under impression that his turn will come for leading evidence after the evidence of defendants no.1 to 4 is over. She, therefore, submitted that the order dated 19.11.2012 may be set aside.

6. For recalling order dated 19.11.2012, the defendants filed application Exhibit 444. By order dated 11.9.2013, the learned trial Judge rejected that application on the ground that the suit is of the year 1993 and defendant no.6 was not diligent in attending the suit. Ms Parasnis, therefore, submitted that orders dated 19.11.2012 and 11.9.2013 may be set aside thereby permitting defendant no.6 to lead evidence. She assures that within one week from today, defendant no.6 will file affidavit in-lieu of examination-in-chief and serve copy in advance on the other side.

7. On the other hand, Mr. Salunke supported the impugned order. He submitted that right from 28.9.2012 onwards, suit was adjourned for leading evidence by defendants no.1 to 4 and 6. Though the learned trial Judge gave several opportunities to defendant no.6, defendant no.6 did not lead evidence. Having regard to the fact that suit is of 1993, the learned trial Judge was justified in passing orders on 19.11.2012 and 11.9.2013. He

further submitted that as the plaintiff's evidence was over, his Advocate was not present on 28.9.2012 to 19.11.2012.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Narration of the above facts shows that on 28.9.2012, suit was adjourned for evidence of defendants no.1 to 4 and 6. This continued on 11.10.2012, 29.10.2012 and 19.11.2012. On all these dates, the plaintiffs and Advocates were absent. As noted earlier, on these dates the suit was adjourned for defendants no. 1 to 4 and 6 to lead evidence. I find merit in that submission of Ms Parasnis that defendant no.6 was under bonafide impression that his turn will come for leading evidence after the evidence of defendants no.1 to 4 was over. In my opinion, if the learned trial Judge is of the view that defendant no.6 is protracting hearing of the suit, costs should have been imposed on defendant no.6 instead of closing evidence. Having regard to the assurance given by Ms Parasnis and also for the reasons indicated herein above, the impugned orders dated 19.11.2012 and 11.9.2013 are set aside. Petition is disposed of in following terms.

(i) Defendant no.6 will file affidavit-in-lieu of examination-in-chief within one week from today and serve copy in advance on the other side.

(ii) Defendant no.6 will extend full cooperation for leading

evidence and the trial Court will permit defendant no.6 to lead evidence. Parties assure that they will extend full cooperation for early disposal of the suit.

(iii) Rule is made absolute in aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)