

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11275 OF 2014

Anna Bhanudas Gayakwad through PoA Holder
Shivaji Anna Gayakwad ... Petitioner
Vs.
Gena Khandu Tarange ... Respondent

Ms Amruta Mehendale for Petitioner.
Mr. Rahul Kadam for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 18, 2015

P.C. :

Heard Ms Mehendale, learned Counsel for petitioner and Mr. Kadam, learned Counsel for respondent at length. Rule. Mr. Kadam waives service for respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the - (i) order dated 27.06.2012 below exhibit-1 closing the evidence of the plaintiff; (ii) order dated 03.01.2013 below exhibit-70 by which the learned trial Judge rejected the application made by the plaintiff for setting aside the order dated 27.06.2012 and (iii) order dated 17.09.2013 below exhibit-76 rejecting the application for review of the order dated 27.06.2012 passed by the learned 2nd Joint Civil Judge, Junior Division, Indapur.

3. Petition was heard on 20.12.2014. After hearing the learned Counsel for the petitioner, this Court issued notice to the respondent, returnable on 20.01.2015. The Court also directed petitioner to deposit

an amount of Rs.3,000/- in this Court. Ms Mehendale submits that petitioner has deposited amount of Rs.3,000/- in this Court.

4. As noted earlier, the learned trial Judge has passed order of closure of evidence. Order dated 27.06.2012 reads thus,

“ Plaintiff and his Advocate, both, are absent. Matter is fixed on today's board for evidence of plaintiff. However, he is absent. No application is on record. Hence, evidence of plaintiff is closed.

sd/-

27.06.2012

2nd Joint C.J.J.D., Indapur ”

5. Ms Mehendale submitted that instead of passing drastic order of closure of plaintiff's evidence, if at all, the learned trial Judge was of the opinion that plaintiff is protracting the trial, he should have imposed costs. By passing order of closure of evidence, plaintiff will not be in a position to establish his case and this virtually will amount to dismissal of the Suit. On the other hand, Mr. Kadam supported the impugned order.

6. As noted earlier, the learned trial Judge has closed the evidence of the plaintiff. If the plaintiff is precluded from leading evidence, it will virtually amount to no contest in the Suit. In order to give fair opportunity to both the sides, it is necessary to permit the plaintiff to lead evidence. As the petitioner has already deposited cost of Rs.3,000/- in this Court, in my opinion, ends of justice will be served by setting aside the impugned orders thereby permitting the petitioner to lead evidence. The cost deposited by the petitioner is allowed to be withdrawn by the respondent unconditionally. Hence, Rule is made absolute in the following terms:

a. Orders dated (i) 27.06.2012 below exhibit-1 closing the evidence of the plaintiff; (ii) 03.01.2013 below exhibit-70 by which the

learned trial Judge rejected the application made by the plaintiff for setting aside the order dated 27.06.2012 and (iii) 17.09.2013 below exhibit-76 rejecting the application for review of the order dated 27.06.2012 are quashed and set aside;

- b. Petitioner-plaintiff is permitted to lead evidence;
- c. Respondent is permitted to withdraw cost of Rs.3,000/-,
unconditionally.
- d. No order as to costs.

7. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab