

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 996 OF 2015

Subhash R. Hinduja .. Petitioner
vs.
Sarpanch Gandhi Nagar
Gramp Panchayat and anr. .. Respondents

Mr. Mithun Mahajan for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 7 April, 2015.

P.C. :-

1] On 23 March 2015, notice was issued to the respondents, wherein it was made clear that the matter would be heard and disposed of finally at the stage of admission itself.

2] The learned counsel for the petitioner states that the service has been effected upon the respondents and he also files an affidavit of service to that effect.

3] Accordingly, Rule. Rule is made returnable forthwith.

4] This petition is directed against the order dated 19 November 2014 made by the learned 11th Joint Civil Judge, Junior Division, Kolhapur, refusing to set aside the order dated 8 October 2014, closing the petitioner's evidence in the matter.

5] The petitioner, by an application dated 3 November 2014 applied for setting aside the order dated 8 October 2014. The application stated that on the day when the matter was posted for evidence, was not feeling well and therefore, could not depose in the matter. The application is accompanied by an affidavit of the petitioner.

6] The respondents, filed their say, disputing the contents of the application dated 3 November 2014. However, the respondents stated that in case the Court desires to consider the application, then the same should be subject to the petitioner's paying costs of Rs.5,000/-.

7] By the impugned order, the learned Joint Civil Judge has dismissed the application dated 3 November 2014, by observing that even on previous occasions, the petitioner had avoided to lead evidence in the matter.

8] In the facts and circumstances of the present case, interest of justice would be met if an additional opportunity is afforded to the petitioner to lead evidence in the matter. However, looking to the

conduct of the petitioner, including in particular the circumstance that the matter was fixed not less than ten occasions in the past, the petitioner ought to be saddled with substantial costs.

9] Accordingly, the impugned order dated 19 November 2014 is set aside. The order dated 8 October 2014 closing the petitioner's evidence is also set aside. All this is subject to the petitioner's paying costs of Rs. 15,000/- (Rs. Fifteen Thousand only) in favour of respondent No.1 - Sarpanch Gandhi Nagar Gram Panchayat, Gandhinagar, Tal-Karveer, Dist-Kolhapur, within a period of four weeks from today.

10] The petitioner to deposit an amount of Rs.15,000/- (Rs.Fifteen Thousand only) in the Trial Court, within a period of four weeks from today and the respondent No.1 - Sarpanch Gandhi Nagar Gram Panchayat, Gandhinagar, Tal-Karveer, Dist-Kolhapur to be permitted to withdraw the same unconditionally. In case, the amount is not deposited, this petition shall be deemed to have been dismissed.

11] Further, the petitioner is directed to proceed with his evidence on the next date to be fixed by the learned Trial Court without fail.

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

13] The petitioner to produce an authenticated copy of this order before the learned 11th Joint Civil Judge, Junior Division, Kolhapur and also make available a copy thereof to the respondents.

14] All parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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