

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1128 OF 2015

Shri Mahavir Balram Pardeshi)... Petitioner
V/s.
Shri Madan Ramlal Pardeshi)... Respondent

Mr.Drupad Sopan Patil for the petitioner.
None for the respondent.

CORAM: K.R.SHRIRAM, J.

DATED : 3.3.2015.

P.C. :

1 Rule. Rule made returnable forthwith. The petitioner has filed affidavit of service of one Subhash Ranjave affirmed on 13.2.2015 confirming service upon the respondent. None for the respondent though served.

2 The petitioner and the respondent are brothers and the dispute relates to two rooms admeasuring in all about 240 sq. feet. The respondent had filed a suit against the petitioner for recovery of possession and mesne profit in June-2011. In November-2011, the written statement was filed. Issues were framed on 11.6.2014 and the plaintiff's evidence was completed on 20.8.2014. As police complaints were lodged by the parties against each other, the petitioner who is the defendant in the trial court filed an application for issuing witness summons to the police officer Ganjpeth police

chowki. The police officer did not remain present and upon application made by the petitioner, the trial court was pleased to issue, by an order dated 28.10.2014, Show Cause Notice to the police officer as to why action should not be taken against him for disobedience of the court's order.

3 The petitioner in order not to stall the proceedings, filed affidavit in examination in chief of their 2nd witness on 10.11.2014. The plaintiff who is the respondent sought an adjournment on the next date which was granted. The matter was kept on 21.11.2014 on which date the petitioner requested the court for adjournment because the Advocate was out of station. The court observed that the defendant on number of times, has been seeking adjournment and prolonged the matter. The court also observed that the defendant though called repeatedly was absent and the witness was also absent. However, considering the personal ground of the Advocate for defendant, the matter was adjourned to 22.11.2014 and it was also made clear that if the defendant does not proceed with leading evidence of his witness, the evidence of the defendant will be treated as closed and the matter will be fixed for arguments. The petitioner applied to the court for re-calling the said order dated 22.11.2014 and once again sought an adjournment because the Advocate had gone to his home town for some personal work. The trial court rejected the application and fixed the matter for arguments. Against this order, the petitioner has approached this court.

4 While perusing the impugned order, the counsel for the petitioner made a solemn statement that cost as ordered by the court which is mentioned in paragraph-3 of the impugned order, has been paid.

5 When one considers the chronology of dates and events as submitted by the petitioner, I feel this is a matter where the petitioner should be granted one chance to lead evidence. One of the reason why I am inclined to consider the relief sought in the petition is the fact that even though the police officer was not available, the petitioner on his own filed examination in chief of the 2nd witness. Therefore, in my view the trial court erred while stating the petitioner deliberately was attempting to prolong the matter. By closing the evidence also grave injustice will be caused to the petitioner.

6 Moreover, the counsel for the petitioner also undertakes that the petitioner will go on with the matter on all and any date fixed by the trial court and will not seek any adjournment on any ground whatsoever.

7 In view of the above, the impugned order is set aside. The petitioner is permitted to lead evidence of DW-2.

(K.R.SHRIRAM, J.)