

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1287 OF 2006

Kripashankar Singh S/o. Ramdular Singh.] ... Petitioner

Versus

Gaurishankar Singh S/o. Ramdular Singh]
and Anr.] ... Defendants

Mr. R. R. Sharma for Petitioner.

CORAM :- M. S. SONAK, J.

DATE :- MAY 07, 2015

P. C. :-

1. This petition challenges order dated 09/01/2006 by which the Petitioner's suit came to be dismissed for failure to proceed with the cross-examination of the defence witness.

2. This petition was admitted on 12/07/2006 and therefore, at this point of time, there is no question of going into the issue as to whether the Petitioner has any alternate remedy to impugn the order dated 09/01/2006.

3. The record indicates that the Petitioner-Plaintiff had completed his evidence and on 19/11/2005 the Respondent No.1 (Defendant No.1) filed his Affidavit in lieu of examination-in-chief and

the matter was adjourned to 29/11/2005 for cross-examination by and on behalf of the Petitioner. On 29/11/2005, however, the matter was adjourned to 01/12/2005, although the Petitioner's Advocate was present and ready to cross-examine the DW 1. On 01/12/2005, the cross-examination of DW 1 commenced but could not conclude, as DW 1 had to leave station in order to attend marriage. The matter was adjourned to 12/12/2005, on which date the Advocate for Petitioner was present but for no fault attributable to the Petitioner, the matter was adjourned to 19/12/2005.

4. On 16/12/2005, the Petitioner's Advocate took ill and was required to be hospitalized till 31/12/2005. Thereafter, the doctors advised the Petitioner's Advocate complete bed-rest till 16/01/2006.

5. On 19/12/2005, an adjournment was applied for on behalf of the Petitioner, the same was granted subject to payment of costs of Rs.750/-. The matter was adjourned to 09/01/2006 on the condition that if the Petitioner's Advocate was not available for cross-examination on the adjourned date, alternate arrangements be made. On 09/01/2006, the Petitioner was constrained to seek adjournment for about a week or so, since the Petitioner's Advocate, who was familiar with the case and who had already commenced the cross-examination was still not in a position to attend the Court. On 09/01/2006, however, the impugned order came to be made dismissing the Petitioner's suit by recourse to provisions of Order 9 Rule 19 of the CPC.

6. From the aforesaid narration of facts, it does appear that the impugned order operates too harshly upon the Petitioner. The records would indicate that there was no serious lack of diligence on the part of the Petitioner. From the medical certificate produced, it does appear that Petitioner's Advocate had taken ill and was required to be hospitalized. In these circumstances, there was really no justification to make such a harsh order dismissing the suit.

7. Accordingly, the impugned order is set aside. The Special Civil Suit No.3660 of 1998 is restored to the file of City Civil Court at Mumbai. The Petitioner shall pay costs of Rs.1,500/- to the Defendants.

8. The Petitioner to appear before the City Civil Court at Mumbai on 24/06/2015 and file authenticated copy of this order. Thereupon, the learned City Civil Judge to issue notices to the Defendants, before proceeding any further with the suit. This is because the Defendants have not appeared before this Court despite notice.

9. Rule is accordingly made absolute to the aforesaid extent. There shall be no order as to costs in this petition.

(M. S. SONAK, J.)