

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1191 OF 2014
WITH
WRIT PETITION NO.2203 OF 2014

Ajit Ratnakar Bagwe.] ... Petitioner

Versus

Jayantilal Velji Satra and Ors.] ... Respondents

Mr. N. P. Wagle for Petitioner.
Ms. Swapnila Rane for Respondent No.2.

CORAM :- M. S. SONAK, J.
DATE :- JULY 20, 2015

P. C. :-

1. These petitions can be disposed of by a common order.
2. Rule.
3. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
4. The impugned orders in these two petitions reject the Petitioner's application for leading additional evidence in order to produce certain documents. No sooner the cross-examination of the

Petitioner concluded on 24/12/2013, the Petitioner applied for leave to lead secondary evidence on 10/01/2014. In the application, the Petitioner clearly prayed for leave to produce the documents on record and further that the documents be marked as exhibits in the Petitioner's evidence. On the date when the Petitioner made this application, the Petitioner had not tendered any pursis to indicate that his evidence had concluded.

5. The learned trial Judge, by his order dated 13/01/2014, allowed the production of documents, who proceeded on the basis that the application dated 10/01/2014 made by the Petitioner was only for production and not for marking of the documents in evidence. This was an obvious error, since the Petitioner had specifically prayed for the documents to be taken on record and exhibited in evidence.

6. On the immediate next date i.e. on 17/01/2014, the Petitioner applied for leave to file additional Affidavit in lieu of examination-in-chief, restricted to the marking of the documents, of which production had already been permitted. It is this application which has been rejected by the impugned orders dated 28/01/2014.

7. Mr. Wagle, learned Counsel for Petitioner submitted that there was no delay on the part of the Petitioner and further, the Petitioner had, at no stage, closed his evidence. Mere production of the documents, would be of no avail, unless the same are marked in evidence. The order dated 16/01/2014 was clearly erroneous, to the extent it proceeded on the basis that there was no prayer made by the

Petitioner for exhibiting the documents. The learned Counsel submitted that severe prejudice will occasion to the Petitioner in case the impugned order is not interfered with.

8. On the other hand, Ms. Rane, learned Counsel for Respondent No.2, submitted that the conduct of the Petitioner in the present case is such as disentitles the Petitioner any equitable relief in the exercise of extraordinary jurisdiction of this Court. Ms. Rane pointed out that the Petitioner has made several applications and delayed the proceedings. Ms. Rane also pointed out that the Petitioner is attempting to convert the disputes before the Small Causes Court into a dispute, which would perhaps fall in the arena of testamentary jurisdiction. Ms. Rane also submitted that the documents, which the Petitioner seeks to produce and marked in evidence, have no nexus whatsoever with the issue of eviction from the suit premises. For all these reasons, Ms. Rane submitted that the impugned orders warrant no interference.

9. Having heard the learned Counsel for parties and perused the record, in my Judgment, the impugned orders are required to be interfered with. There is nothing on record to indicate that the Petitioner had closed his evidence. No sooner the cross-examination had concluded, the Petitioner applied for leading of secondary evidence and also submitted that the documents be exhibited. The production was allowed by order dated 13/01/2014, however, prayer for exhibiting the documents was not considered on the basis that no

such prayer was at all made. The Petitioner, virtually on the next day, applied for leading of additional evidence in order to get the documents marked by pointing out that prayer for exhibiting the documents has already been made in the original application. No useful purpose would be served by permitting mere production of documents but not permitting their exhibition. In such circumstances, the impugned orders dated 28/01/2014 shall have to be set aside and the Petitioner shall have to be allowed to lead additional secondary evidence in terms of the Affidavit in lieu of examination-in-chief already filed by the Petitioner.

10. However, there is much substance in the contention of Ms.Rane that the main issue in these suits is whether the Plaintiff therein i.e Respondent No.1, is entitled to the eviction of both – the Petitioner and/or the Respondent No.2 – from the suit premises. Accordingly, all contentions of Ms. Rane that issue, *inter se*, between the Petitioner and the Respondent No.2, as to which of them, is the real tenant of the suit premises, are obviously kept open for decision in appropriate proceeding, which are already pending between the parties. These suits, wherein the impugned orders have been made, are certainly not the occasion for any decision of such *inter se* disputes between the Petitioner and the Respondent No.2.

11. With the aforesaid observations, Rule is made absolute in terms of prayer clause (b) in each of the two petitions. This shall, however, be subject to the Petitioner paying costs of Rs.5,000/-

(Rupees Five thousand Only) each in favour of the Respondent No.1-landlord, even though the Respondent No.1 has not appeared in this Court. This is because on account of dispute *inter se* between the Petitioner and the Respondent No.2, the eviction suit instituted by the Respondent No.1 is being unnecessarily delayed. Such costs should be deposited by the Petitioner in the trial Court within a period of four weeks from today. The costs once deposited, may be withdrawn by the Respondent No.1 unconditionally. The trial Court, to ensure compliance with the order as to costs as well as other matters.

12. Further, since the suit has been filed in the year 1996, the trial Court is directed to dispose of the same as expeditiously as possible and in any case, within a period of one year from today.

13. Both the petitions are disposed of in the aforesaid terms.

(M. S. SONAK, J.)