

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8771 OF 2014

Nilesh Chandrakant Dagade and another ... Petitioners
Vs.
Ravi Shankar Sonawane and others ... Respondents

Mr. S. R. Nargolkar i/b. Ms Meenakshi Sakhare for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 10TH JUNE, 2015

P.C. :

Heard Mr. Nargolkar, learned Counsel for petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the order dated 18.01.2014 passed by the learned 5th Joint Civil Judge Senior Division, Pune below exhibit-139 in Special Civil Suit No.63 of 2008. By that order, the learned trial Judge allowed the application made by the respondent and set aside the no cross order of witnesses of the plaintiff subject to costs of Rs.3,000/- to be paid by the defendant to the plaintiff.

3. In support of this Petition, Mr. Nargolkar strenuously contended that the respondent-defendant did not file written statement and no written statement order was passed on 24.02.2012. Aggrieved by that order, respondent instituted Writ Petition in this Court, which was dismissed on 18.07.2013. Thereafter, plaintiff led his evidence and in the year 2011, no cross order was passed against the witness of the plaintiff. On 09.12.2013, respondent took out application for setting aside no cross order passed in the year 2011. No sufficient reason is given for setting aside no cross order. Despite that, by the impugned

order, the learned trial Judge allowed that application. He, therefore, submitted that the learned trial Judge was not justified in allowing the application having regard to the conduct of the defendant.

4. I have considered the submissions advanced by Mr. Nargolkar. I have also perused the application made by the respondent-defendant, and in particular paragraphs 4 and 5 thereof. As noted earlier, defendant did not file written statement and it appears that the said order was confirmed upto the Apex Court. In view thereof, it will not be possible now for the defendant to lead evidence. If the defendant is not allowed to even cross-examine the witnesses of the plaintiff, the Suit instituted by the plaintiff will go unattended and uncontested. The reason given by the defendant for setting aside no cross order is that the Suit of the plaintiff will go uncontested. In any case, plaintiff will have to prove his case by leading evidence even if no written statement is filed by the defendant. In such a situation, no prejudice will be caused in case the defendant is permitted to cross-examine the witnesses of the plaintiff. The impugned order passed by the learned trial Judge is purely discretionary. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) C.P.C.

5. Liberty is reserved to the parties to apply for expeditious disposal of the Suit. If such application is taken out, the learned trial Judge will pass appropriate orders thereon.

(R. G. KETKAR, J.)