

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8897 OF 2015**

Kuldipsingh Gurubchansingh Kochhar

..Petitioner

Vs.

M/s. Ganesh Developers & Co.

..Respondents

Mr. Abhishek Pungliya for the Petitioner

Mr. S. C. Wakankar for the Respondent Nos.4 to 6

CORAM : R. M. SAVANT, J.

DATE : 4th SEPTEMBER, 2015

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 5-8-2015 passed by the 4th Additional Judge, Small Cause and Joint Civil Judge Senior Division, Pune, by which order, application Exhibit 180 filed by the Petitioner i.e. the original Defendant No.2 for setting aside the no evidence order, came to be rejected.

2 The no evidence order was passed on 18-3-2015 in view of the fact that inspite of opportunity, the Petitioner/Defendant No.2 did not lead evidence. It appears that after 18-3-2015, the Suit was kept for arguments and in fact arguments were heard on 7-4-2015 on which day also no application was made on behalf of the Defendant No.2 or the Defendant No.3 against whom no evidence order has been passed that they intend to apply for setting aside the order of no evidence dated 18-3-2015 and that they would want to

lead evidence. In fact, it seems time was sought to make oral arguments on behalf of the said Defendants. It is almost after a period of 4 months of the passing of the order dated 18-3-2015 that the instant application Exhibit 180 came to be filed in 28-7-2015. In the fact situation as above, the Trial Court did not deem it appropriate to accept the reason given by the Defendant Nos.2 and 3 as to why they could not lead their evidence.

3 The Learned Counsel appearing for the Respondent Nos.4 to 6 i.e. the original Defendant Nos.4 to 6 sought to contend that the Defendant Nos.2 and 3 amongst whom is the Petitioner who is the Defendant No.2 are in collusion with the Plaintiffs and therefore inspite of their Written Statement being filed and inspite of opportunity being given, had not led their evidence and the instant application Exhibit 180 has been filed merely to delay the proceedings when the Suit is kept for judgment.

4 In my view, it is not necessary to go into the said aspect having regard to the reasons mentioned in the impugned order which is passed on the facts which have been narrated hereinabove. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]