

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1535 OF 2014

Shri Jyotiba Shankar Tibile	..	Petitioner
VS.		
Shri Kisan Kamlakar Bhoir & Anr.	..	Respondents

Mr. Sandesh D. Patil for Petitioner.
Mr. D. G. Khamkar for Respondent No. 1.
Mr. Sachin K. Hande for Respondent No.2.

CORAM : M. S. SONAK, J.
DATE: 16 APRIL 2015

P.C. :-

- 1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.
- 2] This petition challenges order dated 4 September 2013, by which the petitioner's evidence has been ordered to be closed for lack of diligence on his part. Having heard the learned counsels for the parties and perused the record, it is no doubt true that the petitioner has not been diligent in the matter of pursuing his evidence. However, the application made by the petitioner for recalling the order closing his evidence indicates that the petitioner was posted at Nashik and therefore could not diligently attend to the suit which is instituted at Thane. In such circumstances, it would be appropriate if the impugned order is set aside, subject to the petitioner paying costs of Rs.15,000/- to the respondent no. 1 only.

3] The reason why no costs are awarded in favour of the respondent no. 2, is because the dispute pertains to a flat, which the petitioner claims to have purchased from the respondent no. 2 - builder. The case of the respondent no. 1 is that the respondent no. 2 had already sold the suit flat to him. Presently, the respondent no. 2 is out of possession whereas the petitioner claims to be in possession of the suit flat.

4] Considering the aforesaid circumstances, Rule is made absolute in terms of prayer clause (a) subject to the petitioner depositing in the trial court costs of Rs.15,000/- within a period of two weeks from today. Once such costs are deposited, the respondent no. 1 is at liberty to withdraw the same unconditionally. Further, looking to the controversy involved, the learned Civil Judge is directed to dispose of the suit as expeditiously as possible and in any case within a period of one year from today. The petitioner to cooperate in the matter of expeditious disposal of the suit and to proceed with his evidence with due diligence.

5] All parties to act on an authenticated copy of this order.

(M. S. SONAK, J.)