

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 435 OF 2015

Madanlal C. Dakle .. Petitioner

vs.

Prakash B. Misal
Heir & Lr. of Balu V. Misal .. Respondent

Mr. Ashok Toraskar for the Petitioner.
Mr. Hemant Ghadigaonkar for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 9 JULY 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition challenge the orders dated 22 March 2013 made below Exhibits-35 and 38 by the learned Small Causes Court at Mumbai, which have the effect of denying the Petitioner liberty to obtain translation of some documents from the Chief Translator, High Court, Bombay.

3] The Petitioner, in the present case, is unnecessarily delaying the matter. As pointed out by the learned counsel for the Respondent no proper applications came to be made, the applications for withdrawals came to be made and in the bargain, L.E. Suit No. 250/286 of 2007 has not proceeded to trial.

4] Nevertheless, the record indicates that the Petitioner had forwarded copies of the documents to the Translator. On basis of such copies, some translation has been procured. The learned Small Causes Court , however, in the impugned orders, has observed that the translation ought to be on the basis of original documents. The suit is instituted by the Petitioner seeking eviction of the Respondent. Accordingly, the delay should affect the Petitioner more than the Respondent. The learned counsel for the Respondent, however submits that in case any decree of eviction is made, the Respondent to be saddled with mesne profits for the delay, which is basically occasioned by the Petitioner.

5] Taking into consideration the aforesaid circumstances, interest of justice would be met if two impugned orders are set aside. The Small Causes Court is directed to forward the originals to the Chief Translator, High Court, Bombay for English translation. The Chief Translator to furnish the translation within a period of six weeks from the date of receipt of the original documents. This shall be subject to the Petitioner paying costs of Rs.5000/- to the Respondent. Further, in case, any occasion arises for determination of mesne profits, the learned Small Causes Court, bear in mind that

the delay between the years 2013 and 2015 is also on account of the Petitioner not proceeding with the trial in the present proceedings with due diligence. Accordingly, this aspect shall be taken into consideration at the stage of determination of mesne profits, should and when any such occasion arise.

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

7] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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