

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2716 OF 2015

Mr. Rizwan Iqbal shaikh and anr. .. Petitioners
vs.
Mrs. Jahida Abbas Shaikh and anr. .. Respondents

Mr. A.B. Tajane for the Petitioners.
Mr. R.N. Sanghavi for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 23 MARCH, 2015

P.C. :-

1] This petition, questions the order dated 18 August 2014 and 19 November 2014, both of which have closed the petitioners' evidence for failure on the part of the petitioners to file an affidavit-in-evidence or to otherwise proceed with the evidence notwithstanding, the circumstance that the plaintiffs' evidence was concluded on 25 April 2013.

2] The records disclose that several opportunities were granted to the petitioners for leading evidence. However, the petitioners failed to lead their evidence in the matter. Accordingly, by order dated 20 July 2013, last chance was granted to the petitioners to lead evidence subject to payment of costs of Rs.1000/-. The petitioners, till date have not paid such costs. Further, the petitioners once again applied for further opportunity to lead evidence.

3] Ultimately, by order dated 6 August 2014, the learned Civil Judge Senior Division at Pune rejected the petitioners' application

for adjournment and closed the petitioners' evidence. The petitioners thereafter filed an application on 18 August 2014 seeking recall of the order dated 6 August 2014. The same was rejected by an order dated 18 August 2014. Undaunted, the petitioners applied for review of the order dated 18 August 2014, which was since rejected by the order dated 19 November 2014. Hence, the present petition.

4] From the aforesaid, it is clear that more than ample opportunities have been offered to the petitioners to lead their evidence. However, for one reason or other, the petitioners are not proceeding with their evidence. By way of costs, the petitioners have offered to pay Rs.25,000/- to the respondents-plaintiffs. Further, the petitioners have stated that they would file their affidavit-in-evidence within a period of one week from today and thereafter they will not seek any unnecessary adjournments.

5] Although, the petitioners do not deserve any indulgence, by way of last chance and upon taking into consideration the petitioners offer to pay costs of Rs.25,000/-, the impugned orders closing the petitioners evidence are hereby set aside. The petitioners to file an affidavit-in-evidence within a period of ten days from today. Before filing the affidavit of evidence, the petitioners to pay the respondents/plaintiffs costs of Rs.25,000/-.

6] The learned Civil Judge is directed to dispose of the Special Civil Suit No.863 of 2011, as expeditiously as possible and in any case within a period of four months from today.

7] The parties to appear before the learned Civil Judge on 30 March 2015 at 11.00 a.m. along with an authenticated copy of this order.

8] The learned Civil Judge to ensure that the petitioners pay costs to the respondents/plaintiffs, as aforesaid and only thereafter take on record the affidavit in evidence. The costs should be paid within a period of ten days from today.

9] In the event, the costs are not paid within a period of ten days, then this petition shall be deemed to have been dismissed and the impugned orders shall revive.

10] The Civil Judge, Senior Division, Pune, in any case to dispose of the Regular Civil Suit No. 863 of 2011 within a period of four months from today. Both parties to cooperate in the matter of expeditious disposal of the suit.

11] Rule is made absolute to the aforesaid extent. There shall be no order as to separate costs in the present petition.

12] Parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)