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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12324 OF 2015

Smt.Nalini Himatlal Kantilal and others .. Petitioners

Vs.

Brahma Jeet and others .. Respondents

Mr.Rajesh Kachare i/b Mr.Ameet A.Palkar, Advocate for the
Petitioners.

Mr.A.S.Rao, Advocate for the Respondents.

CORAM : R.G.KETKAR, J.
DATED : 14^h DECEMBER, 2015

P.C. :

. Heard Mr.Rajesh Kachare, learned Counsel for the
petitioners and Mr.A.S.Rao, learned Counsel for the respondents.
Rule. Mr. Rao waives service for the respondents. At the request and
by consent of the parties, rule is made returnable forthwith and the
Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of
India, petitioners have challenged orders dated 30/11/2015 below
Exhibit 82 and Exhibit 1 in Regular Civil Suit No. 55 of 2013 passed
by the learned Civil Judge, Junior Division, Wada. The learned trial
Judge rejected the application Exhibit 82 on the ground that
sufficient chances were given to the petitioners, hereinafter referred
to as plaintiffs, for adducing their evidence. However, the plaintiffs

witness Mr.Bhavesb Jethalal Nayak did not remain present on 21/11/2015 & on 30/11/2015. By order dated 30/11/2015 below Exhibit 1, the learned trial Judge discarded affidavit of examination-in-chief filed by Bhavesb Nayak at Exhibit 77 and closed the evidence of the plaintiffs.

3. Mr.Kachare submitted that on behalf of the plaintiffs, affidavit of examination-in-chief at Exhibit 77 of Bhavesb Nayak was tendered on 16/11/2015. The learned trial Judge fixed the date 21/11/2015 for cross examination of that witness. The witness could not remain present on 21/11/2015 and accordingly, the matter was adjourned on 30/11/2015 for cross examination of the said witness. The said witness could not remain present as he was suffering from backache. Mr. Kachare further submits that the learned trial Judge while passing order below Exhibit 82 observed that plaintiffs did not deposit cost of Rs.500/- as well and therefore, came to the conclusion that plaintiffs are trying to prolong the trial. He submitted that in fact the costs of Rs.500/-is deposited on 03/12/2015 i.e. to say after the impugned order. He further assures that Bhavesb Nayak will remain present for facing cross examination on 06/01/2016 and will extend full co-operation. The plaintiffs will also extend full co-operation for adducing evidence of rest of their witnesses.

4. Mr.Rao, upon taking instructions, states that on

06/01/2016, the defendants will cross examine the plaintiff's witness – Bhavesh Nayak.

5. In view thereof as also having regard to the fact that plaintiffs have deposited costs of Rs.500/- *albeit* after passing of the impugned order, in my opinion, following order will meet the ends of the justice.

i) The order dated 30/11/2015 below Exhibits 82 and 1 are set aside.

ii) The affidavit of examination-in-chief at Exhibit 77 of Mr.Bhavesh Nayak shall be taken on record. He will appear before the trial Court on 06/01/2016 when defendants will cross examine that witness.

iii) The parties shall extend co-operation while recording the evidence of the witnesses.

iv) The order dated 30/11/2015 below Exhibit 1 closing the evidence of the plaintiff is also set aside.

6. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)