

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3312 OF 2015

Jalgaon Golden Warehouse Corporation,
Through Proprietor,
Nitin Madanlal Vyas,
Age – 38 years, Occ – Business,
R/o C-21, Transport Nagar,
Jalgaon, Taluka and District- Jalgaon

PETITIONER

VERSUS

1. Maharashtra Agro Industries Development CORPORATION LIMITED
Corporation Limited,
Through Regional Manager,
R/o 48, Shahu Nagar, Jalgaon,
Taluka and District – Jalgaon
2. Rashtriya Chemical & Fertilizer Ltd.,
Through manager,
Near Jalgaon Fruit Sale Society,
Opp – Tahasildar Office,
Baliram Peth, Jalgaon
3. The State of Maharashtra (DELETED)

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Mr. S. H. Tripathi, Advocate for the petitioner
Mr. Jagdish H. Toshniwal, Advocate for respondent No.1
Mr. L. B. Pallod, Advocate for respondent No.2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th MARCH, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent.

2. After hearing learned advocates, the position emerges that special civil suit had been instituted by respondent No.1, for accounts way back in 2004, issues were framed somewhere around 2008 and affidavit by the plaintiff had been filed at the end of 2009. Since then, the matter does not appear to have been properly conducted on behalf of the petitioner - defendant No.1. Under the circumstances, on 5th August, 2013 an order of "no cross" came to be passed against defendant No.1. Thereafter, on 26th August, 2013, application Exhibit-121 had been moved for setting aside said order of "no cross" by defendant No.1. The application was resisted by the plaintiff by filing say on 26th August, 2013 contending that the matter is being neglected and not conducted by defendant No.1 and also same is the case in respect of the counter claim filed by defendant No.1 and for several dates, defendant No.1 and his advocate have failed to attend to the court matter. In the circumstances, it was requested that counter claim of defendant No.1 be dismissed in default and application Exhibit-121 be rejected. Accordingly, application Exhibit-121 came to rejected for the reason that it had not been accompanied affidavit of defendant No.1 and that the same had not given any reasons.

3. Subsequently, application Exhibit-126 had been moved by defendant No.1 making amends in respect of the deficiencies as were seen by the trial court while rejecting application Exhibit-121, referring to various reasons for which the matter went unattended and affidavit in support of the application had also been filed. However, said application came to be rejected under order dated 15th December, 2014 by the trial court referring to that since Exhibit-121 was rejected, this application as well is rejected.

4. On the very next date, the counter claim filed by defendant No.1 as well came to be dismissed referring to that the defendant has not cross examined witnesses, the plaintiff has also not examined any other witness, no cross order has been passed against defendant No.1 and though sufficient opportunity has been given to the defendant, however, the defendant neither cross examined the witness nor examined any witness. Under the circumstances, the counter claim also came to be dismissed.

5. Learned advocate for the petitioner refers to various events and places reliance on the contents of the writ petition, particularly, paragraphs No.4 and 5. These contents do not appear to have been seriously disputed by filing counter to the

writ petition.

6. In the circumstances, I deem it appropriate that it would be expedient and in the interest of justice to allow the writ petition and accede to the request being made under the writ petition by setting aside orders dated 5th August, 2013 on Exhibit-121, order dated 15th December, 2014 on Exhibit-126 and order dated 16th December, 2012 on Exhibit-122 along with order of no cross on Exhibit-82, however on the condition that the petitioner shall deposit a sum of Rs.25,000/- towards costs in the trial court within a period of four weeks from the date of receipt of writ of this order to the trial court. Upon deposit of the costs, the amount be allowed to be withdrawn by the plaintiff.

7. Cross examination be conducted by defendant No.1 within a period of four weeks from the date of deposit of costs and the matter be proceeded with accordingly by the trial court as expeditiously as possible.

8. With aforesaid directions and observations, the writ petition stands disposed of. Rule is made absolute accordingly.

9. At this stage, learned advocate Mr. Tripathi draws attention to the fact that pursuant to the orders passed by this court

earlier on, an amount of Rs.10,000/- has been deposited by the petitioner in the trial court. In view of the same, the petitioner is required to deposit further sum of Rs.15,000/- making up together an amount of Rs.25,000/- towards costs.

[SUNIL P. DESHMUKH, J.]

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