

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7141 OF 2015

KACHRULAL GOKUL AHERGAWALI
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr S P Tilve
AGP for Respondent 1 : Mr B A Shinde
Advocate for Respondent 2 : Mrs M A Deshpande

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CORAM : V.K. JADHAV, J.

Dated: February 24, 2016

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PER COURT :-

1. The petitioner is the original defendant. The Respondent Municipal Corporation, Aurangabad instituted a suit for recovery of certain amount. On 10.11.2014 the Trial Court has passed the order against the defendants for closing his evidence. Consequently, the petitioner/defendant has filed an application at Exh.96 for setting aside the said order. The learned Judge of the trial Court, by order dated 18.12.2014 allowed the said application with costs of Rs.300/- with a further direction to the petitioner/defendant to file the affidavits of evidence of the alleged witnesses alongwith the list of the witnesses on next date.

2. On 1.4.2015 the defendant and his counsel remained absent. Trial Court has observed that the petitioner/defendant failed to file the affidavits of witnesses as per the order passed below Exh.96 and accordingly, the trial court has ordered that the suit to proceed further without evidence of the witnesses of the defendant. Hence, this writ petition.

3. The learned counsel for the petitioner-defendant submits that, the petitioner has filed list of the witnesses in compliance with the order passed by the trial Court dated 18.12.2014 below Exh.96. Learned counsel submits that there is sufficient compliance of the order passed by the Trial Court below Exh.96 and on 1.4.2015 since the defendant and his counsel remained absent, due to some personal reasons, the affidavits of the witnesses could not be filed.

4. Learned counsel for respondent/plaintiff submits that, even though the petitioner-defendant has filed list of witnesses as directed by the Trial Court in the order dated 18.12.2014 below Exh.96, the petitioner-defendant

has failed to file affidavits of all the witnesses and on 1.4.2015 the defendant and his counsel remained absent. Learned counsel accordingly submits that, the Trial Court has rightly passed the order closing evidence of the petitioner-defendant. There is no substance in the writ petition and writ petition is liable to be dismissed.

5. It appears that, the suit is filed for recovery of certain amount. The petitioner-defendant has already filed list of witnesses before the Court. The learned counsel for the petitioner submits that, the petitioner would file affidavit of all the witnesses in compliance with the order passed by the Trial Court below Exh.96.

6. In view of this, following order would meet the ends of justice.

ORDER

- I. Writ Petition is hereby partly allowed.
- II. The order dated 1.4.2015 passed below Exh.1 by the learned Civil Judge S.D. Corporation Court, Aurangabad in Special Civil Suit No.29/2012 is hereby quashed and set aside.

- III. The petitioner/defendant shall file the affidavits of all witnesses as mentioned in the list of the witnesses in compliance with the order passed by the Trial Court below Exh.96 **on the First Date after the disposal of this writ petition,** before the Trial Court.
- IV. Trial Court shall proceed with the suit in accordance with law.
- V. Writ Petition is disposed of accordingly. No costs.

(V.K. JADHAV, J.)

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aaa/-