

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11215 OF 2015

1. Sunil Madhukar Chaudhari PETITIONERS
Age - 43 years, Occ - Business,
R/o Chintaman Morya Nagar,
Dharangaon, Taluka - Dharangaon
District - Jalgaon

2. Mangala Ambadas Sonar,
Age - 46 years, Occ - Agriculture / Service
R/o Khatri Galli, Dharangaon,
Taluka - Dharangaon,
District - Jalgaon

VERSUS

1. Raman Dhudku Bansi RESPONDENTS
Age - 49 years, Occ - Agriculture

2. Bhimrao Dhudku Bansi
Age - 44 years, Occ - Agriculture

3. Sanjay Dhudku Bansi
Age - 39 years, Occ - Agriculture

4. Indubai Dhudku Bansi,
Age - 74 years, Occ - Agriculture/Household

All R.o Sant Rohidas Wada,
Dharangaon, Taluka - Dharangaon,
District - Jalgaon

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Mr. Vijay B. Patil, Advocate for the petitioners
Mr. Girish V. Wani, Advocate for respondents

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 21st JUNE, 2016

ORAL JUDGMENT :

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

2. The petitioners, who are original plaintiffs in Special Civil Suit No.144 of 2011 filed for specific performance of contract, possession and injunction, are before this court purportedly aggrieved by order dated 17th January, 2015 upon an application Exhibit-60 whereunder their request to set aside orders dated 24th June, 2014 and 5th July, 2014 about closure of their evidence had been refused.

3. Mr. Patil, learned advocate for the petitioners points out various dates and circumstances involved and contends that none of the party is going to gain anything from the impugned order. As a matter of fact, there is every likelihood that at some other stage in the litigation, the matter may be remitted for this very purpose having regard to procedural provisions. He, therefore, submits that a lenient view be taken, which may be expedient and would augment cause of justice. This court, according to him, has already indicated that the inconvenience

caused to the other side would be taken care of by imposition of costs, since Rs.5000/- were directed to be deposited.

4. On the other hand, Mr. Wani, learned advocate for the respondents submits that although the petitioners are plaintiffs, they have been conducting the proceedings of the suit pretty casually, which can be borne out from the dates in the suit before the trial court and that even the applications to have set aside the closure of evidence orders have not been attended to. He, therefore, submits that there is no due diligence being shown in prosecuting the matter and requests to dismiss the writ petition.

5. Be that as it may, having regard to that it is petitioners' own suit, which is getting entangled in the process, may be a situation, not conducive even to the interest of the respondents, the same can be salvaged by imposition of costs and charting a course for further conduct of the proceedings. This would, of course, subject to imposition of costs, over and above the amount which has already been deposited in this court.

6. The impugned order, as such, is set aside, including the orders dated 24th June, 2014 and 5th July, 2014. The petitioners hereafter to diligently conduct proceedings of the suit.

Commencement of further evidence by the plaintiffs shall be within a period of two weeks from the date of receipt of writ of this order and further prosecution of the matter including the evidence by the defendants is expected to be completed within a period of eight (8) months from the date of receipt of writ of this order.

7. The inconvenience caused in the process to the respondent-defendants will have to be compensated by imposition of costs to be paid by the petitioners - plaintiffs to the respondents, to be equally distributed amongst them. As such, in addition to and over and above the amount earlier deposited the petitioner shall deposit a sum of Rs.5000/-, as and by way of costs in trial court within two weeks from the date of receipt of writ of this order. Thereupon, the suit proceedings as directed aforesaid be proceeded with. The amount of Rs.5000/- which has been deposited in this court by the petitioners be transferred to the trial court and as such, an aggregate amount of Rs.10,000/- shall be costs to be distributed amongst the respondents. Payment of costs is the condition precedent. In case of failure to deposit costs as directed the impugned order shall be deemed to have been revived without further reference to the trial court or this court.

8. Writ petition, as such, stands allowed. Rule is made absolute in terms of prayer clause "B".

[SUNIL P. DESHMUKH, J.]

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