

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

WRIT PETITION NO.10894 OF 2015

Haribai w/o Laxman Tour (Patil)
and others

... PETITIONERS

VERSUS

Akshaykumar s/o Laxman Tour (Patil)
and others

... RESPONDENTS

.....
Shri V.C. Solshe, Advocate for petitioners
Shri V.D. Sapkal, Advocate for respondent Nos.4 and 5
.....

CORAM: S.V. GANGAPURWALA, J.

DATED: 23rd March, 2016.

ORAL ORDER :

1. The petition assails the order rejecting the application for setting aside evidence close order.

2. Mr. Solshe, the learned counsel submits that, the adjournment was sought on the ground that some Video recording was done and the said evidence is to be adduced. However, the Court rejected the application. The application for setting aside the order of rejection was filed. The adjournment was sought on bonafide grounds.

3. The learned counsel for the respondents submits that, the present petitioners are protracting the matter since long time. Since 2010 the matter is for evidence. Earlier also the order was passed for closing evidence. As far as the petitioners are concerned, the Court had set aside that order on costs. The said cost was also deposited after a long delay.

4. The suit is filed by the respondent Nos.1 to 3 against the defendants for declaration, injunction and in alternate, for possession. It would appear that, for almost six years the matter is pending for evidence of the petitioners. Earlier also evidence close order was passed by the trial Court, the same was allowed on payment of cost of Rs.400/-. The cost was also deposited after a long delay. The learned counsel for the petitioners tried to justify the same on the ground that no time limit was given to deposit the costs. The conduct of the petitioners certainly cannot be approved. The petitioners are protracting the matter.

5. In normal course, I would not have allowed the present petition, however, considering the fact that the suit is a substantive suit in respect of an immovable property, I am inclined to grant one more opportunity to the petitioners. However, the petitioners deserve to be mulct with costs.

6. It is submitted that the petitioners have already deposited Rs.5000/- as per the order of this Court at the time of issuance of notice. The petitioners shall deposit additional Rs.5000/- (Rupees five thousand) in the trial Court on or before 14th April 2016.

7. On deposit of Rs.10,000/- (Rupees ten thousand) i.e. Rs.5000/- deposited earlier pursuant to the orders of this Court dated 29.10.2015 and additional Rs.5000/- vide the present order, to be deposited by 14th April 2016, the impugned order is quashed and set aside. If cost as directed is not deposited, then the order of the trial Court shall stand confirmed. The petitioners shall lead their evidence on the given date and shall co-operate in expeditious disposal of the suit. The learned trial Judge shall consider that the matter is pending for the evidence of the defendants since the long time.

8. Writ Petition is accordingly disposed of. No further costs.

(S.V. GANGAPURWALA, J.)