

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 273 OF 2016

1. Sonalkumar Bipinchand Wani,
Age 40 years, Occ. Business/Cloth Shop

2. Bipinchand Sakarlal Wani,
Age 70 years, Occ. Business/Cloth Shop

Both R/o. Dhule Road, Near petrol
Pump, Nandurbar,
District Nandurbar

3. Nilesh Bipinchand Wani,
Age 45 years, Occ. Business/Cloth Shop
Presently R/o. Sai. Home,
Flat No. 504,
Near Althan Garden,
Bharthana Road, Surat (Gujrat)

...Petitioners

versus

Anil Ramdas Wani
Age 62 years, Occ. Petty Business
R/o. Manik Chouk, Nandurbar
District Nandurbar

...Respondent

.....
Mr. R.R. Mantri, advocate for the petitioners
Mr. C. R. Deshpande, advocate for respondent
.....

CORAM : V. K. JADHAV, J.
DATED : 21st JANUARY, 2016

ORAL JUDGMENT:-

1. Rule. Rule returnable forthwith. By consent, heard finally.

2. The respondent is the original plaintiff, instituted a suit for

eviction of petitioners-tenants on the ground of bonafide need etc. After completion of pleadings, respondent-plaintiff has filed his affidavit of evidence. The petitioners-defendants have filed application at Exh.32 contending therein that instead of presenting list of witnesses, respondent-plaintiff filed his evidence of affidavit below Exh.30 and thereafter the suit is posted for examination in chief and cross examination of the respondent-plaintiff. It has contended that the evidence of affidavit is not filed at appropriate stage and same is required to be returned to the respondent-plaintiff and further suit is to be posted for filing list of witnesses and documents. The petitioner-defendant has also filed an application Exh.41 contending therein that certain facts are mentioned in the affidavit of evidence which are not pleaded by the respondent-plaintiff in the plaint. It is therefore prayed in the said application that the evidence filed by respondent-plaintiff be ordered to be struck down and the respondent-plaintiff be directed to file fresh evidence of affidavit. The trial court by order dated 11.9.2015 below Exh.32 and by order dated 4.11.2015 below Exh.41, rejected both the applications. Hence, this writ petition.

3. Learned counsel for the petitioners by relying on judgment of this Court in the case of ***Harakchand Gulabchand Dhoka vs. Kashinath Narsingh Marathe***, reported in 2010 (6) Bom.C.R. 379

conceded that approach of the trial court is right to the extent that it cannot order of deletion of objectionable paras. Learned counsel further submits that trial court should have treated the application Exh.41 as objection, required to be decided at the appropriate stage of suit. Learned counsel further submits that the provision of filing of list of witnesses is brought into force in order to have fair trial of the suit and both the parties should get fair opportunity while their case is tried before the court. Learned counsel further submits that since the respondent-plaintiff has not filed list of witnesses before the Court, the petitioners-defendants may not be able to cross examine the respondent-plaintiff. Furthermore, the petitioners-defendants cannot be put to surprise by examining the witnesses on the next date of hearing, after evidence of respondent-plaintiff is over.

4. Learned counsel for the respondent-plaintiff submits that in the light of judgment in the case of Harakchand Dhoka (supra) the application filed by the petitioner-defendant below Exh.41 may be treated as an objection to be decided by the court at the appropriate stage. So far as issue of filing list of witnesses is concerned, the learned counsel submits that the provisions of Order XVI are not mandatory in nature but the same are directory in nature. Thus, there is no substance in the writ petition and the writ petition is liable to be dismissed.

5. The provisions of Order XVI of C.P.C. provides filing of list of witnesses within 15 days. The said provision is held to be directory in nature. The summons can be issued to the person to be examined as witness, even in case where no list of witness filed and the court is satisfied with the reasons given by the party for the delay. Furthermore, if the provisions of Order XVI and Order XVIII are taken together and if the witness is brought before the Court to give evidence without applying for summons, in such case, examination in chief is not to be recorded in the court but shall be in the form of affidavit. However, the provision of Order XVI though directory in nature, the same is for convenience of the parties and trial of the suit. In that way, the parties get fair opportunity of putting their cases before the Court. At this stage, learned counsel for respondent-plaintiff submits that the respondent-plaintiff may close his evidence after examining himself, except in the light of the cross examination if any contingency arises to examine any other witnesses. In view of this statement, application Exh.32 is disposed of. Learned counsel for the respondent-plaintiff submits that in the light of provisions of Section 38 of Maharashtra Rent Control Act 1999, the trial court may be directed to expedite the hearing of suit. In view of the above discussion, following order is passed:-

O R D E R

- I. Order dated 4.11.2015 passed by Joint Civil Judge, Junior Division, Nandurbar, below Exh.41 in R.C.S. No. 24 of 2014 is hereby quashed and set aside with direction that the trial court shall treat application Exh.41 as an objection and decide the same at the appropriate stage of the suit.
- II. The order passed below Exh.32 is hereby quashed and set aside and in the light of above discussion application Exh.32 is hereby disposed of.
- III. The trial court may consider the provisions of Section 38 of Maharashtra Rent Control Act 1999 for expeditious hearing of suit.
- IV. Writ petition is disposed. Rule is made absolute in the above terms. No costs.

(V. K. JADHAV, J.)