

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2611 OF 2014

Bharat Bhauso Kumtole and another	...	Petitioners
Vs.		
Ajit Babu Chougule (decd) through heirs		
Shobha A. Chougule and others	...	Respondents

Mr. P. M. Arjunwadkar for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 07, 2016

P.C. :

Heard Mr. Arjunwadkar, learned Counsel for petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiffs No.5 and 6 have challenged the order dated 20.01.2014 passed by the learned Civil Judge, Junior Division, Kurundwad in Regular Civil Suit No.157 of 1998. By that order, the learned trial Judge rejected the application exhibit-72 made by the plaintiffs for setting aside 'no evidence' order.

3. By order dated 16.04.2014, this Court issued notice for final disposal and granted ad-interim order in terms of prayer clause (c). Office remark shows that respondents No.1A to 1E and 2 to 8 are served. Despite service, nobody appears on their behalf. In view of the order dated 16.04.2014, I have heard Mr. Arjunwadkar for final disposal.

4. Mr. Arjunwadkar submitted that evidence of plaintiff No.6 was over. The matter was posted for further evidence of the plaintiffs on 30.12.2013. Plaintiffs did not remain present and the Suit was adjourned to 10.01.2014 for the evidence of the plaintiffs. Though the

plaintiffs remained present, they failed to adduce evidence. No application for adjournment was made, and therefore, the learned trial Judge passed 'no evidence' order.

5. Mr. Arjunwadkar submitted that within 10 days i.e. on 20.01.2014, petitioners filed application for setting aside 'no evidence' order. Defendants filed reply opposing the application. In the alternative, defendants contended that if the application is allowed, heavy cost be imposed on the plaintiffs.

6. Mr. Arjunwadkar submits that plaintiffs want to cross-examine 7 more witnesses and he assures that plaintiffs will extend full co-operation for the early disposal of the Suit.

7. As noted earlier, evidence of plaintiff No.6 was over. The matter was posted for further evidence of plaintiffs on 30.12.2013. As plaintiffs remained absent, the matter was adjourned to 10.01.2014. Though plaintiffs were present, they failed to adduce evidence. No application for adjournment was also made, and therefore, the learned trial Judge rejected the application for setting aside 'no evidence' order. The learned trial Judge further observed that though ample opportunities were given to the plaintiffs, they failed to adduce evidence.

8. In view of the assurance of Mr. Arjunwadkar that plaintiffs will extend full co-operation for early disposal of the Suit as also the reply filed by the defendants that in case the application is allowed, heavy cost be imposed on the plaintiffs, I am of the opinion that the learned trial Judge should have allowed the application subject to imposing cost. By closing evidence of plaintiffs, the valuable right of the plaintiffs is taken away. Despite service, none appears for respondents. In view thereof,

the Petition deserves to be allowed. Hence, impugned order is set aside and plaintiffs are permitted to lead evidence. It is expressly made clear that plaintiffs will extend full co-operation for early disposal of the Suit. Rule is made absolute in the aforesaid terms.

(R. G. KETKAR, J.)

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