

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1380 OF 2016

Manish Govardhan Masand through his C.A.
Suresh Narendra Chadda ... Petitioner
Vs.
Pandharinath Sitaram Patil and another ... Respondents

Ms Prabha Badadare i/b. Mr. Hemant D. Patil for Petitioner.
Mr. Shrishailya S. Deshmukh for Respondent No.1.
Mr. J. M. Puranik for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 02, 2016

P.C. :

Heard Ms Badadare, learned Counsel for petitioner, Mr. Deshmukh, learned Counsel for respondent No.1 and Mr. Puranik, learned Counsel for respondent No.2. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as appellant No.2, has challenged the order dated 28.01.2016 passed by the learned District Judge-5, Kalyan in Civil Appeal No.120 of 2006. By that order, the learned District Judge directed to proceed with the matter without cross-examination of the witness by appellant No.2.

3. Ms Badadare invited my attention to order dated 28.01.2016 passed by the learned District Judge-5, Kalyan below exhibit-74. By that order, the learned District Judge rejected the application exhibit-74 made by the appellant No.2 for adjournment on the ground that he has

preferred SLP against the order dated 04.12.2015 passed by this Court in Writ Petition No.3930 of 2015. Among other grounds, the learned District Judge rejected the application on the ground that one of the witnesses is police officer of the rank of Police Inspector and on the previous date, he was present. Even on that date, he was present to lead evidence. Being the public servant, his precious time is being wasted unnecessarily by casual adjournments. The learned District Judge also noted that four witnesses were present in the Court to tender their evidence. Out of them, two are residents of Gujarat State. Those witnesses were also present on the previous dates. The learned District Judge, therefore, rejected the application and directed appellant No.2 to secure presence of Advocate in the second session at least by 3.30 p.m. so that the Court can proceed with the recording of evidence.

4. By the impugned order, the learned District Judge directed matter to proceed without cross-examination of the witness by the appellant No.2 as Advocate for the appellant and appellant No.2 were both present.

5. Ms Badadare states that today is the date of hearing before the learned District Judge. She assures that Advocate for the appellant No.2 will proceed with the cross-examination of the witnesses so present and will not seek any adjournment on any ground including the ground that the matter is pending before the Apex Court. She submits that the impugned order may be set aside and the appellant No.2 may be permitted to cross-examine the witnesses.

6. The learned Counsel appearing for respondents submit that subject to imposing condition that appellant No.2 and his Advocate will not seek adjournment and will proceed with the cross-examination of the

witnesses present today, the impugned order may be set aside.

7. In view thereof, impugned order dated 28.01.2016 is set aside. Appellant No.2 is permitted to cross-examine the witnesses subject to condition that no application for adjournment shall be made on any ground whatsoever. Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)

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