

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 1851 OF 2016

Aniruddha V. Diwanji.

.. Petitioner

Vs

M/s Paytronic Network Private Limited & anr. .. Respondents

Mr.K.P.Anilkumar, for the Petitioner.

Mr.Prashant Jadhav, for Respondent Nos.1 & 2.

***CORAM : N.M.Jamdar, J.
Thursday, 27 October 2016.***

P.C. :

Heard learned counsel for the parties. Considering the narrow controversy involved, the Petition is taken up for disposal forthwith.

2. By the impugned orders dated 22 December 2015 and 13 January 2016, the evidence of the Petitioner-Plaintiff has been closed. The Petitioner has filed a suit bearing No.103355 of 2011 which is pending in the City Civil Court at Mumbai. The suit is filed seeking damages / monetary claim against Respondents who is stated to be the employer of the Petitioner. The learned City Civil Judge by order dated 22 December 2015 closed the evidence of the Petitioner as the Petitioner did not appear. The application below Exhibit 4 was moved to recall the order, that application was also rejected. The suit

is undefended as the Defendant has not filed his Written statement. The learned counsel for the Petitioner submitted that the Petitioner was diligent in prosecuting the suit and great prejudice will be caused if the evidence is closed. He submitted that the Petitioner is ready to give opportunity to the Defendant to file their Written statement. The learned counsel for Respondents opposed the same.

3. I have gone through the roznama and the impugned orders. It can be seen that the Petitioner was not present in the first session and the learned Judge has taken exception to the fact that on the earlier date the Petitioner had gone on a tour. Though Petitioner was at fault before passing a drastic order of closing the evidence, the learned Judge could have put the Petitioner to terms. I am of the opinion that an indulgence could be granted to the Petitioner if the Petitioner tenders an apology to the learned Judge. Accordingly, the Writ Petition is disposed of by quashing and setting aside the impugned orders dated 22 December 2015 and 13 January 2016.

4. The Respondent-Defendant is permitted to file Written statement which shall be filed within period of eight weeks from today. This indulgence is on a condition that Petitioner will file an affidavit of unconditional apology before learned City Civil Court Judge, within period of four weeks from today. Writ Petition is accordingly disposed of.

(N.M.Jamdar, J.)