

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2966 OF 2016

Ulhas Vasant Chury and another ... Petitioners
Vs.
M/s. Thakoor Land Developments Pvt. Ltd. and others... Respondents

Mr. Prakash G. Lad for Petitioners.
Ms Rupa Baval for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : APRIL 12, 2016

P.C. :

Not on Board. At the request of Mr. Lad, taken up for admission.

2. Heard Mr. Lad, learned Counsel for petitioners and Ms Baval, learned Counsel for respondent No.1 at length. Mr. Lad orally prays for deleting respondents No.2 to 5, being the formal parties. Leave to delete respondents No.2 to 5 is granted. Amendment shall be carried out forthwith. Rule. Ms Baval waives service for respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 12.01.2016 as also 06.02.2016 passed by the learned Judge presiding over Court Room No.14 of the Bombay City Civil Court in B.C.C. Suit No.7552 of 1981. By order dated 12.01.2016, right of petitioners, hereinafter referred to as defendant No.1A and 4 to cross-examine P.W.1 was forfeited. By order dated 06.02.2016, application for setting aside order forfeiting the right of defendants No.1A and 4 to cross-examine P.W.1 was rejected.

4. Mr. Lad submitted that on 12.01.2016, application was made on behalf of defendants No.1A and 4 for setting aside order forfeiting the right of defendants No.1A and 4 to cross-examine P.W.1 on the ground that Advocate appearing for them was held up in the High Court. Junior Advocate requested the Court to keep the matter back. By the time, Advocate for defendants No.1A and 4 rushed to the Court, impugned order was passed on 12.01.2016 and therefore, application was presented at 12 noon. That application was rejected on 06.02.2016. He further states that tomorrow is kept tomorrow for cross-examination of P.W.1 by other defendants. He assures that defendants No.1A and 4 will cross-examine P.W.1 as soon as cross-examination by other defendants is over. He further assures that defendants No.1A and 4 will not seek undue adjournment and will complete the cross-examination at the earliest.

5. Ms Baval submits that since the Suit is of the year 1981, the learned trial Judge was justified in forfeiting the right of defendants No.1A and 4 to cross-examine P.W.1.

6. By order dated 12.01.2016, the learned trial Judge forfeited the right of defendants No.1A and 4 to cross-examine P.W.1. Thereafter, immediately, application was made on the same day for setting aside that order and seeking permission to cross-examine plaintiff's witness. The learned trial Judge rejected that application on 06.02.2016 on the ground that defendant No.1 did not pay the cost imposed vide order below exhibit-17 and application was moved after the witness left the Court and the matter was adjourned to future date. Mr. lad submits that defendant No.1 has paid the cost as per the order below exhibit-17, which is not disputed by the learned Counsel for respondent No.1.

7. In view of the assurance given by the petitioners, in my opinion, interest of justice will be served subject to directing the petitioners to pay cost of Rs.10,000/- to the respondent No.1 within two week from today. Payment of cost is condition precedent. Hence, the impugned orders dated 12.01.2016 and 06.02.2016 are quashed and set aside. Defendants No.1A and 4 will cross-examine P.W.1 as soon as cross-examination by other defendants of P.W.1 is over subject to payment of cost of Rs.10,000/- to the respondent No.1 within two weeks from today. It is made clear that in case the cost of Rs.10,000/- is not paid to the respondent No.1 or not deposited in the trial Court within two weeks from today under due intimation in writing to the Advocate for respondent No.1, the impugned orders shall stand revived without further reference to the Court. Rule is made absolute in the aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)

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