

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4400 OF 2016
WITH
CIVIL APPLICATION NO.964 of 2016

Surendra Janardan Raut ... Petitioner
Vs.
Parshuram Pandurang Raut and others ... Respondents

Mr. N. P. Wagle for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : APRIL 13, 2016

P.C. :

Heard Mr. Wagle, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 08.03.2016 passed by the learned Joint Civil Judge, Junior Division, Dahanu below exhibit-74 in Regular Civil Suit No.07 of 2010. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as plaintiff, under Order XVIII, Rule 2 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for calling witnesses and producing evidence by the plaintiff.

3. Mr. Wagle strenuously contended that from 25.11.2014 till 07.04.2015, plaintiff was not well and was admitted for heart ailment in Kokilaben Ambani Hospital, Mumbai. He was unable to attend the court proceedings on the appointed dates. He also could not arrange any witness to remain present between this period. As he was in critical condition, he was unable to give instructions to his lawyer. Mr. Wagle submitted that plaintiff was not given fair and reasonable opportunity to

adduce evidence in support of his case. He, therefore, submitted that the impugned order deserves to be set aside thereby allowing the application exhibit-74 made by the plaintiff.

4. I have considered the submissions advanced by Mr. Wagle. I have also perused the material on record. In paragraph 8 of the impugned order, the learned trial Judge noted that the Suit was instituted on 04.02.2010. On 30.02.2010, written statement was filed. On 06.09.2013, issues were framed and the matter was fixed thereafter for recording the evidence. Plaintiff filed his affidavit of evidence on 24.06.2014 and his cross-examination was over on 01.07.2014. As plaintiff did not lead evidence from 01.07.2014, the learned trial Judge closed his evidence on 15.09.2014. That order was set aside and the plaintiff was allowed to lead evidence. As he did not lead evidence, by order dated 09.12.2014, his evidence was closed.

5. In paragraph 9, the learned trial Judge noted that defendant filed his affidavit of evidence on 27.01.2015 and his cross-examination was over on 03.11.2015. On 24.11.2015, defendant closed his evidence and the matter was kept for arguments. Arguments of both parties were heard and the matter was fixed on 23.02.2016 for plaintiffs reply arguments. At that stage, the present application is filed.

6. Mr. Wagle submitted that between 25.11.2014 and 07.04.2015, because of heart ailment, plaintiff could not attend the proceedings. He also could not arrange any witness. It is not possible to accept these submissions as defendant filed his evidence on 27.01.2015 and his cross-examination was over on 03.11.2015. The matter was thereafter substantially heard by the learned trial Judge. It is at that stage, the application is made. The submission advanced by Mr. Wagle that

because of ill-health of the plaintiff, he could not attend the proceedings cannot be accepted as plaintiff's Advocate cross-examined the defendant. Apart from the Suit is instituted for perpetual injunction restraining defendant from causing obstruction to the peaceful possession of plaintiff and creating any encroachment over the suit lands. The learned trial Judge has also recorded a finding that sufficient opportunity was given to the plaintiff for adducing the evidence.

7. In view thereof, I do not find that any case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

8. In view of the dismissal of the Petition, Civil Application No.964 of 2016 for stay of the further proceedings of the Suit does not survive and the same is disposed of accordingly.

(R. G. KETKAR, J.)

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