

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4404 OF 2014

Vijay Gangaram Mhatre and another ... Petitioners
Vs.
Radheshyam Saheblal Chaube ... Respondent

WITH
WRIT PETITION NO.4405 OF 2014

Vijay Gangaram Mhatre and another ... Petitioners
Vs.
Pravinchandra M. Chheda and another ... Respondents

Mr. G. S. Godbole, Senior Advocate a/w. Mr. Bhushan Walimbe for Petitioners in both the Petitions.

Ms Sneha Singh i/b. Mr. A. M. Saraogi for Respondent in W.P.No.4404 of 2014.

Mr. D. S. Mhaispurkar for Respondents in W.P.No.4405 of 2014.

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

ORDER :

Heard Mr. Godbole, learned Senior Counsel for petitioners in both the Petitions, Ms Singh, learned Counsel for respondent in Writ Petition No.4404 of 2014 and Mr. Mhaispurkar, learned Counsel for respondents in Writ Petition No.4405 of 2014 at length. Rule. Learned Counsel for respective respondents waive service. Having regard to the controversy raised in the Petitions, at the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing.

2. Writ Petition No.4404 of 2014 challenges the order dated 03.04.2014 passed by the learned trial Judge below exhibit-64 in Regular Civil Suit No.425 of 2005. By that order, the learned trial Judge rejected the application made by the petitioners, hereinafter referred to as 'plaintiffs', for setting aside no cross order and seeking

permission to cross-examine defendant's witness. By the impugned order, the learned trial Judge rejected the application on the ground that though defendant has filed affidavit of evidence on 15.01.2013, plaintiffs purposely received copy of that affidavit on 25.03.2013. Though the documents of the defendant have been exhibited and matter has been fixed for cross of defendant, plaintiffs failed to cross-examine the defendant. No cross order passed on 23.07.2013 below exhibit-41. Plaintiffs filed application dated 27.08.2013 below exhibit-55 for setting aside no cross order. That was rejected. On 26.09.2013, plaintiffs filed application exhibit-58, which was allowed on 18.11.2013 subject to costs of Rs.1000/- to be paid to the defendant and Rs.500/- to the Legal Aid. On 18.03.2014, Courts below passed order below exhibit-1 and posted the matter for final hearing. It is at that stage, application for setting aside no cross order and seeking permission to cross-examine defendants' witness was filed, which was rejected by the impugned order.

3. Writ Petition No.4405 of 2014 is directed against the order dated 03.04.2014 passed by the learned trial Judge below exhibit-63 in Regular Civil Suit No.403 of 2002. The learned trial Judge rejected the application on the ground that plaintiff has failed to take steps for serving witness summons and failed to secure presence of witness.

4. Mr. Godbole submits that plaintiffs will cross-examine defendant's witness in Regular Civil Suit No.425 of 2005 and will not seek any undue adjournment. He submits that within three months from appearance of the parties before the trial Court, plaintiffs will complete the cross-examination of defendant's witness/es. Ms Singh submits that defendant will also appear in the trial Court on the date so fixed by this Court and will ensure presence of defendant's witness/es. Learned

Counsel appearing for the parties assure that they will extend full co-operation for completing recording of evidence within three months from the date of appearance of the parties.

5. In view thereof, subject to plaintiffs paying costs of Rs.10,000/- to the defendant-respondent, impugned order dated 03.04.2014 passed by the learned trial Judge below exhibit-64 in Regular Civil Suit No.425 of 2005 is set aside. Mr. Godbole states that plaintiffs have paid costs of Rs.10,000/- in cash to the defendant. Ms Singh acknowledges receipt of costs. Writ Petition No.4404 of 2014 is disposed of in the following terms:

- a. Petitioners and respondent shall appear before the trial Court on 14.10.2016 and for that purpose, no fresh notice be issued to them;
- b. Respondent-defendant will extend full co-operation for completing recording of evidence of his witness/es and will not seek undue adjournment;
- c. Petitioners-plaintiffs will also not seek undue adjournment for cross-examination of defendant's witness/es;
- d. Let the said exercise be completed within 3 months from the date of appearance of the parties;
- e. It is made clear that if plaintiffs seek undue adjournment for cross-examination of defendant's witness/es, the impugned order shall stand revived without further reference to the Court. At the same time, if defendant does not ensure presence of his witness/es, plaintiffs will be at liberty to file appropriate application before the trial Court for passing suitable order;
- f. Rule is made absolute in the aforesaid terms.

6. As far as Writ Petition No.4405 of 2014 is concerned, the learned

trial Judge has rejected the application on the ground that though the witness summons was issued, plaintiffs did not deliberately collect the witness summons for effecting service by hand delivery. Mr. Godbole assures that plaintiffs will collect the witness summons on 14.10.2016 for effecting personal service on the witness on or before 27.10.2016. In case for any reason, plaintiffs do not collect the witness summons on 14.10.2016 and / or do not effect service on the witness on or before 27.10.2016, plaintiffs shall be precluded from examining the said witness.

7. Learned Counsel appearing for the parties assure that they will extend full co-operation for completing the recording of evidence within 3 months from the date of appearance of the parties.

8. In view thereof, subject to plaintiffs paying costs of Rs.10,000/- to the defendants-respondents, impugned order dated 03.04.2014 passed by the learned trial Judge below exhibit-63 in Regular Civil Suit No.403 of 2002 is set aside. Mr. Godbole states that plaintiffs have paid costs of Rs.10,000/- in cash to the defendants. Mr. Mhaispurkar acknowledges receipt of costs. Writ Petition No.4405 of 2014 is disposed of in the following terms:

- a. Plaintiffs shall collect the witness summons from the trial Court on 14.10.2016 and shall effect service by hand delivery on the witness on or before 27.10.2016. If for any reason, plaintiffs do not collect the witness summons on 14.10.2016 and / or do not effect service on the witness on or before 27.10.2016, plaintiffs shall be precluded from examining the said witness;
- b. Parties shall appear in the trial Court on 14.10.2016 and for that purpose, no fresh notice be issued to them;
- c. Plaintiffs shall complete their evidence within 3 months

from the date of appearance of the parties, failing which impugned order shall stand revived without further reference to the Court;

d. Rule is made absolute in the aforesaid terms.

(R. G. KETKAR, J.)

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