

Sequeira

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

WRIT PETITION NO. 6309 OF 2015

Miss Chanda Verma,
D/o Devnarayan Gangaprasad Verma. .. Petitioner
Vs.
Mrs.Shraddha Soni & ors. .. Respondents

Mr.Mandar Sawant, for the Petitioner.
Mr.Kunal Bhange, for Respondent No.1.

***CORAM : N.M.Jamdar, J.
Tuesday, 16 August 2016.***

Oral Order :

By order dated 16 December 2015 notice is issued to the Respondents for final disposal. The Respondent No.1-Plaintiff is represented through an Advocate. As regards other Respondents, the learned counsel for the Petitioner seeks leave to delete the Respondent Nos.2 and 3 as according to him, they are not necessary for disposal of the present Petition. In view of this statement leave is granted. Amendment to be carried out forthwith.

2. By the impugned order the learned City Civil Court Judge has rejected Application below Exhibit No.27 and has observed that inspite of ample opportunity given to the Defendants to cross-

examine the Plaintiff, the Defendant-Petitioner has failed to avail of this opportunity and the Application is vague.

3. Heard learned counsel for the parties. In the Application below Exhibit No.23, the Petitioner had given sufficient cause as to why the cross-examination could not proceed. Even in the Writ Petition these particulars have been specified. Since the Petitioner failed to cross-examine the Respondent-Plaintiff inspite of opportunities, the learned Civil Judge was left with no option but to pass the impugned order. However, while issuing notice this Court has directed the Petitioner to deposit litigation cost of ₹ 10,000 and has also stayed the further proceedings. As of today, therefore the stay to the suit has continued for almost one year. This position where the suit has been stayed for one year does not also annure to the benefit of Respondent-Plaintiff. In my opinion, the equities in the matter can be balanced by directing costs to be made payable to the Respondent-Plaintiff and permit the Petitioner to cross-examine the Plaintiff. The learned counsel for the Petitioner undertakes that no adjournment will be sought by the Petitioner for cross-examination of the Plaintiff, whenever the Plaintiff is available. This statement is accepted.

4. Accordingly, the Writ Petition is disposed of as follows -

- a. The order dated 24 March 2015 passed below Exhibit No.27 is quashed and set aside.

- b. The Application filed by the Petitioner below Exhibit No.27 is allowed.
 - c. The learned Civil Judge will give priority to the disposal of the suit.
 - d. The Respondent No.1 is permitted to withdraw the amount of ₹ 10,000 deposited in this Court.
5. Writ Petition is disposed of in above terms. All parties to act on an authenticated copy of this order.

(N.M.Jamdar, J.)