

Sequeira

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

WRIT PETITION NO. 5937 OF 2012

Shri Janardan Dharma Zavare.

.. Petitioner

Vs

Shri Ramdas Budhaji Govari & ors.

.. Respondents

Ms.Gauri Godse, for the Petitioner.

Mr.Shashank Chaudhry i/b Mr.Sachin Masurkar, for Respondent
Nos.1 to 3.

***CORAM : N.M.Jamdar, J.
Saturday, 15 October 2016.***

P.C. :

By order dated 3 September 2012, notice was issued to Respondents for final disposal and the proceedings of the suit filed by the Petitioner-Plaintiff have been stayed. By the impugned order the learned Civil Judge has permitted the Defendant No.3 to re-examine the Defendant No.3 to exhibit the agreement in question.

2. The learned counsel for the Petitioner submitted that the Defendant No.3 whose application is allowed by the impugned order has not filed any Written statement nor he has adopted the Written statement and there are no pleadings. The learned counsel for Respondents submitted that Defendant No.3 has filed / adopted

the Written statement.

3. The main ground on which the impugned order is assailed is that there are no pleadings by any of the Defendants in respect of the agreement in question and the other ground is that Defendant No.3 has not filed Written statement, also cannot seek such indulgence as sought for from the learned Judge. In the impugned order the learned Judge has not referred to these main contentions of the Petitioner at all. All that the learned Judge has stated that since the advocate for Defendants was not present, the Defendants are permitted to refer to the said agreement by way of further examination. However whether the Defendant No.3 had filed a Written statement or adopted the same or whether there are any requisite pleadings in the Written statement already filed and whether any Defendants have relied upon this agreement, has not been considered, which ought to have been considered before allowing the application. The impugned order is totally cryptic in that regard.

4. Instead of carrying out the exercise for the first time in this Writ Petition to ascertain whether there exists any pleadings and whether Written statement has been filed by Defendant No.3, it will be appropriate if the learned Civil Judge, Alibaug is directed to decide the issue as to whether the Defendant No.3 be permitted to be re-examined to exhibit the agreement in question. The learned

Civil Judge will decide the issue within period of one month from the date of this writ reaching the Court. Registry to communicate the order forthwith.

5. The learned Civil Judge will keep in mind that the suit is pending since the year 2008 and give it priority for early disposal, it deserves. Writ Petition is accordingly disposed of by quashing and setting aside the impugned order dated 17 April 2012. The learned Civil Judge, Alibaug will proceed to consider the issue as directed above.

(N.M.Jamdar, J.)