

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8533/2013

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.K. P. Mali for the petitioner
Mr. Sachin Padiye i/b. Girish R. Agrawal for the respondent Nos.1 and 2.
Mr. Rupesh R. Lanjekar for respondent Nos. 3 to 10.

CORAM : K. K. TATED, J.

DATE : JUNE 29, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner defendant Nos.3 to 3B challenge the order dated 03.04.2013 passed by the Civil Judge, Senior Division, Pune below Exhibit- 147 rejecting the application made by the petitioner to allow them to cross-examine the witness and lead evidence.

2. The learned counsel for the petitioner submits that in the present proceedings, the respondent plaintiff filed Special Civil Suit No. 2003/1997 for specific performance of agreement and in the alternative for damages. He submits that the petitioners appointed one Mr. Agrawal as

their Constituted Attorney to defend the suit. They filed written statement. He submits that their Constituted Attorney never informed the petitioner about the progress in the matter. He submits that though “no cross” order was passed by the Trial Court thrice, same was not informed by their Constituted Attorney. Hence, the Trial Court proceeded with the matter. He submits that as soon as they learnt about these facts, they made application below Exhibit- 147 for review of order dated 12.02.2013 and allow the defendant to lead their evidence. He submits that said application was rejected by the Trial Court only on the ground that the earlier the Constituted Attorney filed application thrice for setting aside “no cross” order as well as for leading evidence. He submits that the petitioner in their application below Exhibit- 147 dated 21.02.2013 in paragraph 3 specifically stated that because of mistake on the part of their Power of Attorney Mr. R. M. Agarwal, it remained on the part of the defendant to take appropriate steps for leading evidence and cross-examine. The learned counsel for the petitioner submits that they have good chance of success in the matter. He submits that if order passed by the Trial Court is not set aside allowing the petitioner to lead their evidence, irreparable loss and injury will be caused

to them. Hence, in the interest of justice, this Hon'ble Court be pleased to set aside the order dated 03.04.2013 allowing the petitioner to lead evidence.

3. Heard the learned counsel for the petitioner at length. It is to be noted that in the present proceedings thrice the Trial Court passed order against the defendant closing their evidence. In spite of that, by order dated 17.01.2013 the Trial Court allowed the defendant to lead their evidence on payment of cost of Rs.2000/-, which reads thus:

ORDER

“The defendant's witness Rajendra Agarwal has filed his affidavit on 21.1.2011. The matter was adjourned from time to time & ultimately rejected on 05.01.2012. On 12.01.2012 defendant moved an application for setting aside & in view of no objection the defendant was granted further opportunity. Again the matter was adjourned till 28.06.2012. Despite last chance defendant again moved an application on 13.07.2012. Application was rejected and the matter was posted for final arguments. On 18.10.2012 against the order was set aside subject to cross Rs.2000/- costs not paid and the matter was posted for cross 02.01.2013, specific direction was given but again, this nothing but abuse of process of law by defendants. The case is closed and the matter is posted for final arguments, the point of court fee open for argument at final stage.”

4. Bare reading of order dated 17.11.2013 shows that the defendant conducted the suit in a casual manner. Though the petitioner in their application made a statement that their power of attorney Mr. R. M. Agarwal failed and neglected to inform them the progress of the matter, that cannot be a ground for setting aside the order dated 03.04.2013. That issue was between the petitioner and the power of attorney. Apart from that the Advocate for the petitioner stated that the matter is kept for arguments on 07.07.2016.

5. Considering the earlier orders passed by the trial court and as the matter is kept for final hearing on 07.07.2016, I do not find any reason to interfere with the impugned order. Hence, the Writ Petition stands rejected.

JUDGE