

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11746 OF 2015

SHRI MAHADU DEORAM RAHADE
AND ANR

...Petitioners

Versus

SMT. CHHABABAI GANPAT RAHADE
AND ORS

...Respondents

....

Mr. Sachin Gite, Advocate for the Petitioners.

Mr. Rameshwar N. Gite, Advocate for Respondent Nos.1 to 6.

....

CORAM : R. G. KETKAR, J.

DATE : 12th APRIL, 2016

P.C.

1. Heard Mr. Sachin Gite, learned Counsel for the petitioners and Mr. Rameshwar N. Gite, learned Counsel for the respondents, at length.

2. Rule. Mr. Rameshwar Gite, waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of

India, original defendants have challenged the judgment and order dated 3.7.2015 passed by the learned 5th Jt. Civil Judge, Junior Division, Nashik below Exh.41 in R.C.S. No.1599/2012. By that order, the learned trial Judge rejected the application made by the petitioners for setting aside 'no cross order' dated 23.6.2015.

4. Mr. Sachin Gite submitted that earlier the petitioners had made application for setting aside 'no cross order'. That was allowed on 30.4.2015 subject to payment of costs of Rs.3000/-. Mr. Gite submitted that in the order dated 30.4.2015, no time limit for payment of costs was stipulated. On 16.6.2015, the petitioners made application for depositing the costs. The learned trial Judge directed the petitioners to deposit the costs by 23.6.2015 as a last chance. Mr. Gite submitted that the petitioners have deposited that amount on 24.6.2015 and as it was deposited after 22.6.2015, the learned trial Judge rejected the application. In short, no 'no cross order' dated 23.6.2015 is maintained.

5. Mr. Sachin Gite submitted that there was delay of one day in depositing the amount.

6. On the other hand, Mr. Rameshwar Gite has taken me through the impugned order and submitted that the plaintiffs filed affidavit of evidence on 27.2.2013. The matter was kept for cross-examination by defendants. The learned trial Judge noted that despite giving opportunities to the defendants to cross-examine the plaintiffs' witness, the defendants did not cross-examine and on 5.7.2013 'no cross' order was passed. On 29.4.2015 the defendants filed application Exhibit-41 which was after one year nine months. That application was allowed on 30.4.2015 subject to payment of costs of Rs.3000/- to the plaintiff. However, the defendants did not pay the costs. On 16.6.2015, the defendants filed application. As and by way of last chance, the application was allowed on the same day with directions to the defendants to deposit costs on or before 23.6.2015. However, the defendants did not deposit the costs and made application on the next day. Having regard to the conduct of the defendants, they do not deserve any indulgence and the petition deserves to be dismissed.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused

the material on record.

8. As noted earlier, 'no cross' order was passed against the defendants on 5.7.2013. That was set aside on 30.4.2015. Perusal of the order shows that the defendants were directed to pay costs of Rs.3000/- to the plaintiffs. However, no time limit was stipulated. On 16.6.2015, the defendants made application for depositing the costs. That application was allowed with direction to the defendants to deposit the costs on or before next date i.e. 23.6.2015. the defendants deposited the amount on 24.6.2015. Learned trial Judge, however, rejected the application by passing the impugned order on 3.7.2015.

9. Mr. Sachin Gite states that within two weeks from today the petitioners will deposit the costs of Rs.15,000/- in the trial Court under due intimation in writing to the plaintiffs Advocate and will cooperate with the disposal of the matter and will not seek undue adjournment. He further assures that the defendants will not seek further extension of time and also will not challenge the order dated 10.2.2015 passed by learned Principal District Judge, Nashik rejecting the transfer application made by the defendants under Section 24 of CPC.

He further states that in case the amount is not deposited within the stipulated period, the defendants accept that that impugned orders will stand revived without further reference to the Court. In view thereof, the impugned order is set aside subject to the petitioners depositing Rs.15,000/- within three weeks from today in the trial Court. Defendants will not seek further extension of time for depositing the amount and also will not challenge the order dated 10.2.2016 rejecting the transfer application. It is expressly made clear that in case the petitioners do not deposit Rs.15,000/- within the stipulated period, the impugned order shall stand revived without further reference to the Court. Respondents are at liberty to withdraw said amount unconditionally. Liberty is reserved with the parties to apply for expeditious disposal of the suit. If such an application is made, learned trial Judge will pass appropriate order thereon. Rule is made absolute in aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)