

1. Heard Mr. Nikhil Wadikar, learned counsel for the petitioner and Mr. P.G.Parkar, learned counsel for the respondent at length.
2. Rule. Mr.Parkar waives service. In view of narrow controversy raised in the petition and 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 section 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant', has challenged the Judgment and order dated 29.11.2016 passed by the learned Judge, City Civil Court, Greater Bombay in Notice of Motion No. 4981 of 2015 in Suit No.1991 of 2011. By that order, the learned trial Judge dismissed the Motion taken out by the defendant for recalling order dated 16.12.2015, thereby, closing her evidence.
4. While dismissing the Motion, the learned trial Judge has

observed in paragraph 5 that after examining DW 1 (defendant herself) on 9.1.2015, the defendant failed to produce and examine her further witness on 9.2.2015 and even on 12.3.2015. Her evidence was closed on 12.3.2015. The defendant was given opportunity to lead evidence by passing order on 15.4.2015 below Exhibit-30. She, however, failed to lead evidence till 28.9.2015. By order dated 28.9.2015 below Exhibit 31, she was given final opportunity. The defendant thereafter examined DW 2 on 13.10.2015 and 27.10.2015.

5. In paragraph 6, the learned trial Judge observed that the defendant thereafter did not adduce evidence of any further witness on 23.11.2015 or 16.12.2015 and accordingly forfeited her right to lead further evidence.

6. Mr.Wadikar has tendered a list of witnesses signed by Advocate for the defendant which is taken on record and marked 'X' for identification. He states that the defendant has already completed evidence of DW 1 and DW 2. Affidavit of examination in-chief of DW 3 dated 16.12.2015 is also ready. He further assures that the defendant will ensure presence of DW 3-Nivrutti Bhagwan Gorde on the date as may be fixed by the learned trial Judge any time before 23.12.2016. He further states that the defendant desires to examine (1) Mr. A.T.K.Husain Advocate, (2) Mr. M.J.Amberkar (Notary) and (3) Mr. A.A.Mulla, Advocate. He assures that on 23.12.2016 the defendant will serve affidavits in

examination-in-chief of these witnesses and serve copies in advance on other side. Mr. Wadikar assures that the defendant will extend full cooperation for completion of her evidence and will not seek undue adjournments. It is further understood by the defendant that in case the defendant tries to delay the trial, the impugned order shall stand revived without further reference to the Court. In addition, if the trial Court finds that defendant is delaying the trial, it will be at liberty to appoint Court Receiver in respect of the suit premises and the plaintiff as agent of the Court Receiver on such terms and conditions as the trial Court may deem fit and proper. Mr. Wadikar states that the defendant is present in the Court and upon taking instructions, these statements are made. Statements made by Mr. Wadikar, on instructions, are recorded.

7. In view thereof, the impugned order is set aside subject to further costs of Rs. 15000/- to the plaintiff. The amount of costs of Rs.15000/-, as also the amount of cost of Rs.2000/- imposed by the trial Court, shall be deposited in the trial Court on or before 23.12.2016 under intimation in writing to the plaintiff's Advocate. Plaintiff is at liberty to withdraw that amount unconditionally.

8. The defendant will ensure presence of DW 3- Nivrutti Bhagwan Gorde on such date/s as may be fixed by the learned trial Judge. The first date shall be fixed prior to 23.12.2016. The defendant will serve copies of examination-in-chief of witnesses,

namely, (1) Mr. A.T.K.Husain Advocate, (2) Mr. M.J.Amberkar (Notary) and (3) Mr. A.A.Mulla Advocate, on the other side, on or before 23.12.2016. The defendant assures that she will extend full cooperation for completion of her evidence and will not seek undue adjournments.

9. In case the defendant does not ensure presence of DW 3-Nivrutti Bhagwan Gorde as also does not serve copies of affidavits in examination-in-chief of (1) Mr. A.T.K.Husain Advocate, (2) Mr. M.J.Amberkar (Notary) and (3) Mr. A.A.Mulla Advocate, on the other side on or before 23.12.2016, the impugned order shall stand revived without further reference to the Court. In addition, the trial Court will be at liberty to consider appointing Court Receiver in respect of the suit premises and plaintiff as an agent of Court Receiver.

10. Rule is made absolute in the aforesaid terms with no order as to costs. Order accordingly.

(R.G.KETKAR, J.)

