

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4324 OF 2016

RAJABHAU TULJIRAM PAWAR
VERSUS
SAMBHAJI SHANKAR SANDSE AND OTHERS

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Advocate for Petitioner : Shri Doke Kishor R.
Advocate for Respondent 3 : Shri Madke D.A.
h/f Shri Mahajan S.Y.
Advocate for Respondents 1 & 2 : Shri Undre V.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 11, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 4.4.2016, by which, the trial Court has declined to recall the 'No evidence order' dated 15.2.2016.

2. The petitioner submits that he was the original plaintiff in RCS No. 26 of 2012. His suit was dismissed in default on 23.2.2015. He was the defendant in the counter-claim filed by respondent No.3. 'No evidence' order was passed against the petitioner on 15.2.2016. He, therefore, moved an application Exhibit 153 on 4.4.2016, praying for recalling of the order dated 15.2.2016 and for permitting him to lead evidence. The said application has been rejected by the impugned order.

3. Learned counsel for respondent No.3 has strenuously defended the impugned order and submits that this petition be dismissed with costs. He further submits that the petitioner, who was the original plaintiff in his suit, was negligent and it was dismissed in default. Same is not restored. Now the petitioner intends to delay the counter claim filed by respondent No.3 and hence the impugned order deserves to be sustained.

4. Considering the submissions of the learned Advocates, I find that the petitioner had filed an application for recalling the 'No evidence order' within about 50 days. Contesting the counter claim is the only hope for the petitioner. His suit is already dismissed in default. He would lose an opportunity of leading evidence to protect his claim to the immovable suit house property. Keeping in view that the delay is not inordinate, the trial Court should have allowed application Exhibit 153 by imposing costs. This Court, by order dated 13.4.2016, has stayed the impugned order.

5. Considering the above, this petition is partly allowed. The impugned order dated 4.4.2016 is quashed and set aside and application Exhibit 153 is partly allowed on the following conditions:-

(A) The litigating sides shall appear in the proceedings before the trial Court on 5.8.2017. Formal notices need not be issued by the trial Court.

(B) The petitioner shall deposit costs of Rs.3,000/- (Rs. Three Thousand only/-) on 5.8.2017 and the sole counter claimant shall withdraw the said amount without conditions.

(C) The petitioner shall lead evidence on 5.8.2017 and shall not seek an adjournment. If he fails to do so, the trial Court shall order the closing of his evidence.

(D) The trial Court shall decide the counter claim as expeditiously as possible.

(E) If any of the above stated conditions are not complied with by the petitioner, he shall lose his right to lead the evidence.

(RAVINDRA V. GHUGE, J.)

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