

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4569 OF 2016

Santram Yashwant More (Patil)
Age 55 years, Occ. Agriculture
R/o Talmod, Tq. Umerga,
District Osmanabad. ..Petitioner

Versus

1. Manik Pandurang Patil
Age 45 years, Occ. Agriculture
R/o Talmod, Tq. Umarga,
District Osmanabad.

2. Dattatray Pandurang Patil
Age 26 years, Occ. Agriculture
R/o as above. ..Respondents

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Advocate for Petitioner : Shri Kulkarni Sanket
h/f Shri Kulkarni Suvidh
Advocate for Respondents : Shri Barde P. V.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 13, 2017
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ORAL JUDGMENT :-

1. Rule.
2. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
3. The petitioner / defendant has putforth prayer clauses (B)

and (C) as under:-

"(B) Quash and set aside the order passed below Exhibit 1 dated 22.2.2016 and exhibit 76 and 78 dated 1.4.2016 by the Ld. Civil Judge Junior Division, Umerga in RCS No.142/2010.

(C) Be pleased to allow application filed below Exhibit 76 and 78 in RCS No.142/2010 on the file of Ld. Civil Judge Junior Division Umerga."

4. I have considered the strenuous submissions of the learned Advocates for the respective parties.

5. The plaintiff had closed his evidence on 20.7.2015. Application Exhibit 67 seeking leave to file a counter claim under Order VIII Rule 6A of the CPC was filed by the defendant and which was rejected by order dated 20.1.2016. Since evidence was not led by the petitioner / defendant, "No Evidence" order was passed by the trial Court on 22.2.2016.

6. Application Exhibit 76 was filed by the defendant praying for leave to file the counter claim and for recalling of the order dated 20.1.2016. Considering the objection raised by the respondents in this petition, the petitioner submits that in so far as the rejection of Exhibits 67 and 76 is concerned, the petitioner shall take recourse to

a remedy as may be permissible in law. This petition is, therefore, disposed off to the extent of the said issue, with liberty to the petitioner to take recourse to a remedy if so permissible in law.

7. In so far as the "No Evidence" order is concerned, the trial Court has rejected application Exhibit 78 for the reason that the defendant appeared to have resorted to delaying tactics and has failed to lead evidence practically for about ten months. Reasons cited were not satisfactory to vacate the 'No Written Statement' order.

8. Shri Barde submits that this petition deserves to be dismissed with reference to the impugned order dated 1.4.2016, since the defendant has consistently delayed the matter. In the alternative, he submits that heavy costs be imposed and the said amount be donated to the District Legal Aid Committee, Osmanabad.

9. I find from the record and the submissions of the learned Advocates that the issue involved in the suit is with regard to an immovable property. No doubt the defendant was agitating his application Exhibit 67 and Exhibit 76 by which, he may have lost time, but it cannot be ignored that even after the rejection of Exhibit 67 on 20.1.2016, the defendant did not show his willingness to lead

evidence till 2.3.2016, when he preferred Exhibit 76. By imposing costs on the defendant, his valuable right to lead evidence, keeping in view the immovable property, can be secured with further conditions.

10. This petition is, therefore, partly allowed. The order dated 22.2.2016, closing the evidence of the defendant and the impugned order dated 1.4.2016, rejecting Exhibit 78 are set aside. Exhibit 78 is allowed, subject to an amount of Rs.5,000/- which the petitioner shall deposit with the District Legal Aid Committee, Osmanabad on/or before 15.1.2018, failing which this order shall stand recalled and the impugned order dated 22.2.2016 and 1.4.2016 shall stand restored with effect from 16.1.2018. No extension of time would be granted.

11. Besides the above directions, the petitioner shall submit a list of witnesses, if not already submitted, on/or before 15.1.2018. If the plaintiff notices that the list of witnesses is unnecessarily enlarged by including unconnected persons as witnesses, he would be at liberty to raise an objection and trial Court shall decide the same expeditiously. Notwithstanding this aspect, the petitioner / defendant shall step into the witness box on 15.1.2018, either for recording his oral examination-in-chief or for tendering an affidavit

in lieu of examination-in-chief.

12. Unreasonable adjournments shall not be sought by the litigating sides and especially the petitioner. The trial Court would be at liberty to impose costs on the petitioner, if unreasonable adjournments are sought.

13. Rule is made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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