

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 6241 OF 2013

Jijabai W/o Shankar Haul,
age 54 years occupation household and agriculture
R/o Jagaji Taluka and Dist. Osmanabad

...PETITIONER
(Original plaintiff)

VERSUS

1. Rukminibai W/o Maruti Shelke,
age 69 years occupation nil
R/o Jagaji Taluka and Dist. Osmanabad
2. Arun S/o Maruti Shelke,
age 54 years occupation agriculture
R/o as above.
3. Vishwas S/o Maruti Shelke,
age 52 years occupation & R/o as above.
4. Balbhim S/o Maruti Shelke,
age 49 years occupation agriculture
R/o Paru Nagar, Murud Taluka and Dist. Latur
5. Shakuntala W/o Rajaram Magar,
age 69 years occupation agriculture & Pensioner
R/o Kakade Plot, D.I.C. Road, Osmanabad
6. Bhartabai W/o Kundlik Gaikwad,
age 44 years occupation agriculture
R/o Kond Taluka and Dist. Osmanabad.

...RESPONDENTS
(Original defendants)

Mr. S.S. Choudhary, Advocate for petitioner

Mr M.B. Kolpe, Advocate for respondents No.1 to 4.

Respondents No. 5 and 6 served with notice.

(2)

CORAM : R.D. Dhanuka, J.

DATE : 14th August, 2017

ORAL JUDGMENT

Rule returnable forthwith.. Learned Counsel for petitioner and contesting parties are present. Learned Counsel for the contesting parties waived service of notice. By consent, matter is heard finally.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has impugned the order dated 26th June 2013, passed by the learned Civil Judge (Senior Division), Osmanabad, closing the evidence of the petitioner (original plaintiff).

3. The petitioner has already filed her affidavit in lieu of examination-in-chief on 15th February 2012, and was cross-examined by the defence Advocate. Since there was some delay on the part of the petitioner/plaintiff in filing affidavit in lieu of examination-in-chief of the other witnesses, the learned Trial Judge closed the evidence of the plaintiff.

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4. Learned Counsel appearing for petitioner submits that due to unavoidable circumstances, the petitioner could not remain present on the dates fixed and could not file evidence of other witnesses, proposed to be examined by the plaintiff. He then states that his client shall file list of witnesses, within two weeks from today and also would file affidavits of such witnesses in lieu of examination-in-chief under Order XVIII Rule 4 of the Civil Procedure Code, within four weeks from today, and would serve copies thereof on the respondents' Advocate. He also assures on behalf of his client that his witnesses would remain present on the dates fixed by the learned Trial Judge and would not ask for any unnecessary adjournment. Statement is accepted.

5. Learned Counsel for respondents No.1 to 4 states that the suit filed by the petitioner is being protracted unnecessarily because of the delay on her part in filing affidavits in lieu of examination-in-chief of her proposed other witnesses. He submits that the learned Trial Judge had granted enough opportunity to the petitioner for the same. He submits that if this Court comes to the conclusion that opportunity shall be given to the petitioner to file affidavits of evidence of other witnesses to be examined, the petitioner shall be imposed cost.

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6. It is not in dispute that the petitioner has already filed affidavit of herself in lieu of evidence, who has been cross-examined by the defence Advocate. In view of unavoidable circumstances, the petitioner could not file evidence of other witnesses. The undertaking of the learned Counsel for the petitioner that list of the witnesses would be filed within two weeks from today and affidavits in lieu of examination-in-chief of other witnesses proposed to be examined other than the petitioner would be filed within four weeks, is accepted. It is made clear that no further extension would be granted.

7. In my view, the interest of justice would be met with, if the impugned order passed by the learned Trial Judge is set aside and an opportunity to lead evidence of other proposed witnesses is granted to the petitioner, subject to conditions of payment of reasonable cost to respondents, on the condition that the witnesses shall remain present, as and when called for on the dates fixed by the learned Trial Judge and shall not seek any unnecessary adjournment. I, therefore, pass the following order.

ORDER

(I) The impugned order dated 26th June 2013 passed by

(5)

the learned Civil Judge (Senior Division), Osmanabad, in Regular Civil Suit No. 248 of 2009 below Exh.1, is set aside. The petitioner is granted liberty to examine other witnesses, whose names shall be disclosed to the respondents/defendants, within two weeks from today. Such witnesses shall file their affidavits in lieu of examination-in-chief, within four weeks from today and shall serve copies thereof on the defendants' Advocate. It is made clear that no further extension would be granted. Proposed witnesses shall remain present on the dates fixed by the learned Trial Judge.

(II) The petitioner shall pay cost of Rs. 5000/- (Rs. Five thousand only) to the respondents/defendants No.1 to 4 in one set, within two weeks from today.

(III) Rule is made absolute in above terms.

(R.D. DHANUKA, J.)

pjm