

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

913 WRIT PETITION NO. 2279 OF 2013

ABHAY DEVIDAS SHINKAR
VERSUS
DEEPAK LAXMAN RATHOD

Shri. Rakesh K. Jain, Advocate, holding for Shri. D.S. Bagul, Advocate, for petitioner.

Shri. Deshpande, Advocate, holding for Shri. C.R. Deshpande, Advocate, for respondent No.1.

Coram: T.V. NALAWADE, J.

Date: 7 July 2017.

ORDER:

1) The petition is filed to challenge the orders made on 31-8-2012 and 6-11-2012 by learned Civil Judge, Junior Division, Dhule in Regular Civil Suit No.410/2001. Both the sides are heard.

2) The suit was filed by the present petitioner for the relief of possession against his tenant. Though the suit was of 2001 no interest was shown to prosecute the matter and ultimately on 31-8-2012 the trial court Judge

observed that the plaintiff was not interested in giving evidence and so the evidence of the plaintiff was treated as closed. There was affidavit as examination-in-chief, but that was also held as no evidence as there was no opportunity to cross examine the plaintiff. On 4-10-2012 the application was moved at Exhibit 66 for setting aside the aforesaid order and on that application order was made on 6-11-2012 that sufficient opportunity was already given and this application came to be rejected.

3) Learned counsel for the petitioner submitted that petitioner is medical practitioner and as he was busy in his work he did not keep follow up and his Advocate also did not take proper steps. The order of the trial court Judge shows that the counsels of both sides were absent and both the parties were also absent. Nothing could have been achieved by the petitioner by not showing interest in prosecuting the matter as the suit was filed for relief of possession. In view of these circumstances this Court holds that one opportunity needs to be given to the plaintiff to prosecute the matter. However, present respondent is required to spend on the present

proceeding and the respondent is from Dhule. In view of these circumstances this Court holds that petitioner-plaintiff needs to pay cost of Rs.5000/- to the defendant, present respondent.

4) In the result, the petition is allowed. The aforesaid orders are quashed and set aside and the plaintiff is allowed to prosecute the matter by giving evidence. The affidavit already presented needs to be treated as examination-in-chief. Both the sides agree for expeditious disposal of the matter and so the trial Court is directed to dispose of the proceeding within six months from the date of receipt of the order. The petitioner is to deposit Rs.5000/- as cost in the trial Court before 7 August 2017. If the amount is not deposited it is to be presumed that the present petition is dismissed. Respondent is allowed to withdraw the amount if the amount is deposited.

Sd/-
(T.V. NALAWADE, J.)

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