

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7342 OF 2017

Bipin Jaysukhlal Mehta & Ors. ... Petitioners

Vs.

1) Kantilal Chunilal Shah
(deleted since deceased)

2) Rajendra Govindji Khona
(deleted since Suit dismissed)

3) Jayantibhai Talakchand Shah & anr. ... Respondents

Mr.S.M. Gorwadkar, Sr.Advocate with P.J. Ramchandani with R.R. Shah i/b Haresh M. Advani for the Petitioners

Mr.Arif Bookwala, Sr.Adv. with Rajesh Jain and Ameya Mahajan i/b Legal Juris for Respondents

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 3, 2017**

P.C. :

1. Not on Board. Upon urgent mentioning, taken on Production Board.

2. Rule. By consent, Rule made returnable forthwith and heard finally.

3. This is a petition directed against the order dated 9.2.2017 by the learned Principal District Judge, City Civil Court, Mumbai, in

S.C. Suit No.3741 of 1998 which is pending before the Court No.13 in the City Civil Court, Mumbai. The matter was posted for 2.3.2017. The plaintiffs i.e., the respondents, have tendered their evidence and the petitioners/defendants have to lead the evidence now. However, on 9.2.2017, an application was made before the Principal District Judge of the City Civil Court that necessary directions for expeditious and effective hearing of the above proceedings are to be issued. On the said application, the learned Principal Judge of the City Civil Court had passed order as follows:

“Since the matter is almost two decades old, the learned Judge is requested to ensure its expeditious disposal by placing the matter at least once in a week on Board and making progress therein”.

4. Thereafter, the defendants made application to set aside this order because the learned Principal District Judge has no power to entertain any application which is made in the said suit when it is pending before the Court No.13. However, the learned Principal Judge passed the following order on 17.3.2017:

“Direction for expeditious disposal of the almost two decades old matter cannot be said to have caused prejudice to the applicant unless the intent is to further prolong the matter as such filed”.

5. Heard submissions of both the learned Senior Counsel appearing for the parties. Both the learned Senior Counsel submitted that the matter should proceed and they are bound by the orders of the Supreme Court and the High Court where both the Apex Court and the High Court have given clear directions to the trial Court to expedite the matter. I am constrained to observe here that it is always better for the parties to mediate on such issues.

6. Undoubtedly, the suit should proceed on a day to day basis. However, the orders passed by the learned Principal Judge on 9.2.2017 and on 17.3.2017 deserve to be quashed and set aside. The learned Principal District Judge should have placed or sent the application dated 9.2.2017 before the learned Judge presiding in Court No.13, who is dealing with the suit. When the suit is part heard and going on, then, it is not proper and correct on the part of the learned Principal Judge, City Civil Court to pass such an order which amounts to interference in the judicial proceedings.

7. Hence, the Writ Petition is allowed. The orders dated 9.2.2017 and 17.3.2017 are quashed and set aside. The trial

Court to take up the Suit and all the applications and hear them on a day to day basis, subject to its convenience. The defendants to lead evidence. The parties shall cooperate with the Court.

8. Rule made absolute accordingly.

(MRIDULA BHATKAR, J.)