

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3973 OF 2015

Shantinath Kallappa Galatge ... Petitioner
Vs.
Shri 108 Vidyasagar Devalaya through self
declared Secretary Ravso Giryappa Naik and others ... Respondents

Mr. Saurabh Oka for Petitioner.
Mr. Vijay Killedar for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 24, 2017

P.C. :

Heard Mr. Oka, learned Counsel for petitioner and Mr. Killedar, learned Counsel for respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 03.03.2015 passed by the learned Joint Civil Judge, Junior Division, Kurundwad in Regular Civil Suit No.200 of 2012. By that order, the learned trial Judge allowed the application made by the defendant No.17 for further cross-examining P.W.1, Shantinath Kallappa Galatage.

3. In support of this Petition, Mr. Oka submitted that on 09.09.2014, plaintiff P.W.1 filed affidavit of examination-in-chief. On 17.09.2014, defendant No.17 conducted cross-examination of P.W.1. On 24.09.2014, plaintiff filed application for adjournment for filing documents. On 26.09.2014, plaintiff filed additional documents. On 30.09.2014, plaintiff filed affidavit of examination-in-chief of P.W.2. On 27.10.2014, defendant No.17 cross-examined P.W.2. On 03.12.2014, plaintiff tendered affidavit of examination-in-chief of P.W.3. He was

also cross-examined by the defendants. On 08.12.2014, plaintiff filed evidence closure purshis. On 18.12.2014, the learned trial Judge passed order closing evidence of plaintiff. He submitted that on 13.01.2015, defendant No.17 submitted his affidavit of evidence and his cross-examination was over on 18.01.2015. On 02.03.2015, defendant No.17 filed application exhibit-255 for further cross-examination of P.W.1 on the ground that inadvertently, defendant No.17 did not cross-examine P.W.1. Mr. Oka submitted that perusal of the application exhibit-255 shows that no satisfactory explanation is given by defendant No.17 for filing application belatedly. In fact by filing application, defendant No.17 is trying to fill up the lacuna. The learned trial Judge was, therefore, not justified in allowing the application.

4. On the other hand, Mr. Killedar supported the impugned order and submitted that while allowing the application, the learned trial Judge imposed costs of Rs.200/- that may be enhanced.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, on 09.09.2014, affidavit of examination-in-chief of P.W.1 was filed. On 17.09.2014, defendant No.17 cross-examined P.W.1 for considerable time. Perusal of the proceedings of 17.09.2014 shows that the request was made on behalf of the Advocate for defendant No.17 for adjourning the cross-examination. Plaintiff's Advocate did not raise objection. Accordingly, cross-examination was deferred till next date. Instead of defendant No.17 cross-examining P.W.1 on the adjourned date i.e. 24.09.2014, application was filed by the plaintiff for adjourning the proceedings for filing documents. On 26.09.2014, plaintiff filed documents. On 30.09.2014, plaintiff filed affidavit of evidence of P.W.2.

6. In my opinion, undoubtedly, defendant No.17 should have insisted for cross-examination of P.W.1. Defendant No.17 was to that extent negligent in not further cross-examining P.W.1. At the same time, plaintiff also did not file application before the trial Court for discharging P.W.1. In the impugned order, the learned trial Judge also noted that no cross order was not passed against defendant No.17. In my opinion, plaintiff was also equally negligent in not filing application before the trial Court for discharging P.W.1. In view thereof, I do not find that the learned trial Judge has committed any error in allowing the application. At the same time P.W.1 is allowed to re-examine himself as contemplated by Section 137 of the Indian Evidence Act, 1872. Subject to this clarification, Petition fails and the same is dismissed.

7. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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