

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7855 OF 2016

M/s. Sagar & Company	... Petitioner
Vs.	
Atmavallabh Samaj Utkarsh Trust	... Respondent

Mr. Vishesh Karla i/b. Vidhii Partners, Advocate for the petitioner.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th April, 2017.**

P.C.:

This Petition was not on board but taken on board by way of production, as the learned counsel for the petitioner prays that the matter is urgent and it is fixed for final arguments by the Joint Civil Judge Junior Division, Vashi in Regular Civil Suit No. 156 of 2003.

2. It is the contention of the learned counsel for the petitioner that the evidence of the respondent/plaintiff is closed and evidence of the petitioner/defendant was recorded. Thereafter the matter was fixed for cross-examination of witness P. Suresh Babu of the petitioner/defendant. Repeatedly the notice was sent by the trial Court, however, Suresh Babu, being the officer of CIDCO, neither appeared before the Court nor is found and therefore, the suit remained pending for a long time. He submitted that it was

necessary for the trial Court to give sometime to the petitioner/defendant to lead further evidence. However, the learned trial Judge by order dated 13th October, 2015 closed the evidence of the petitioner/defendant. He further submitted that by order dated 2nd November, 2015, the application of the petitioner recalling earlier order dated 13th October of closure of evidence is also rejected. He further submitted that it is necessary for the petitioner/defendant to lead evidence and, therefore, the learned trial Court ought not to have passed such order which has caused great prejudice and injustice to the petitioner/defendant.

3. Perused the order dated 13th October, 2015 and 2nd November, 2015 passed by the learned trial Judge. The suit is of 2003. The respondent/plaintiff has closed his evidence on 11th August, 2009 and thereafter petitioner's/defendant's cross-examination was completed on 17th January, 2011, as witness Suresh Babu appeared in the Court and examination-in-chief was recorded on 4th September, 2012. The matter was fixed for cross-examination of Suresh Babu, however, since September 2012, the matter could not proceed for want of the presence of witness Suresh Babu. The roznama discloses that repeatedly the notices were sent by the Court, however, he did not

appear. It was necessary on the part of the petitioner/defendant to take steps and produce his witness for cross-examination. If it is not possible for him to bring the witness, then he could have produced some other witness to corroborate his defence. However, no effective steps were taken and therefore, the trial Court has rightly passed the order of closure of evidence by the petitioner/defendant.

4. Perused the order dated 8th July, 2016 passed by this Court where it is rightly mentioned that the order of 2nd November, 2015 was challenged in this petition by the petitioner in June 2016 and false urgency was prayed and the petitioner has moved before the Court without any urgency. This Court has therefore saddled the cost of Rs.2,500/- on the petitioner/defendant. I do not find any merit in the petition. Hence, Writ Petition is dismissed summarily.

(MRIDULA BHATKAR, J.)