

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

WRIT PETITION NO.8267 OF 2017

Shri Laxmichand Hansraj Nagada @ Shah,
through P.A. Holder

..Petitioner

Vs.

Smt. Sangeeta R. Bhandari and Anr.

..Respondents

Mrs. Latika Belindage for the Petitioner.

Mr. Amogh Khadge i/b Mr. Anwar M. Landge for Respondent Nos.1 and 2.

CORAM: M.S. SONAK, J.

DATE: 25th SEPTEMBER 2017

P.C. :

. Rule. Learned counsel for the Respondents waives service. By consent, the Rule is made returnable forthwith. The Writ Petition is taken up for hearing and final disposal, by consent and on the request of learned counsel.

2. The challenge in this petition is to the orders dated 9/7/2015 (Exh.45), 2/9/2015 (Exh.55) and 7/11/2015 (Exh.62) by which the Petitioner, who is the defendant in Regular Civil Suit No.553/2012, has been precluded from cross examining the plaintiff/plaintiff's witnesses. In an extremely casual manner and after delay, the Petitioner applied for recall of the aforesaid three orders. By order dated 7/6/2017, the learned Trial Judge, has rejected the application which is also impugned in the present petition.

3. The petitioner has infact, not challenged specifically, the orders at Exh.45, Exh.55 and Exh.62. However, by implication,

challenged all these orders, since, the Petitioner, has applied for recall of the said orders which application, has been rejected by the impugned order dated 7/6/2017 which is clearly challenged in this Petition.

4. In the circumstances of the case, it does appear that the Petitioner is not diligent in pursuing the matter, however blame is put on the Advocate and on this ground it is submitted that one more chance may be given to the Petitioner, since, this is the matter where eviction of the Petitioner from the suit premises has been applied for. Although, there are no circumstances to indulge the Petitioner, considering the prayer of the learned counsel for the Respondent-landlord as well as considering the position that in this case eviction of the Petitioner has been applied for, yet another chance can be granted to the Petitioner subject to certain terms.

5. Ordinarily, in the case of this nature, the Petitioner, must be required to pay exemplary cost of not less than Rs.1 lakh, however, the learned counsel pointed out that the Petitioner is a poor person and will not be in a position to pay such costs of this magnitude.

6. Taking into consideration this situation and also, making it clear that the Petitioner will co-operate with the expeditious disposal of the proceedings before the learned Trial Judge, cost of Rs.20,000/- are imposed upon the Petitioner as a condition for recall of the aforesaid impugned orders. However, this is a fit case where proceedings before the Trial Court are required to be expedited because for no fault of the Respondents proceedings have been delayed at the instance of the Petitioner.

7. Accordingly, the impugned orders at Exh.45, 55, 62 and order dated 7/6/2017 are hereby set aside. The Petitioner is granted opportunity to cross examine the plaintiff and the plaintiff's witnesses. This is subject to the Petitioner paying cost of Rs.20,000/- within a period of 4 weeks from today. In case of failure to pay the cost, this petition shall be deemed to have been dismissed without further reference to this court. Further, the parties to appear before the learned Trial Judge on 6/10/2017, which is the next date fixed before the learned Trial Judge. On 6/10/2017, or on such further date as the learned Trial Judge may fix, plaintiff and the witnesses for the plaintiffs will remain present and offer themselves for cross examination. The Petitioner, in no circumstances shall seek any adjournment or refuse to proceed with the cross examination. In case, the Petitioner seeks any adjournment or refuse to proceed with the cross examination, the learned Trial Judge can close cross examination of the Petitioner. The learned Trial Judge is directed to dispose of the proceedings as expeditiously as possible and in any case within a period of 6 months from today.

8. Rule is made absolute to the aforesaid extent with cost.

9. All concerned to act on the basis of an authenticated copy.

(M. S. SONAK, J.)