

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

WRIT PETITION NO.9108 OF 2017

Aabdul Wahid Mashaallah Qureshi ...Petitioner

vs.

Sharda Ramchandra Patil & Ors. ...Respondents

Mr. Omprakash Pandey for the Petitioner.

Mr. Raju D. Suryawanshi for Respondent Nos.1 and 2.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 6th November, 2017

P.C.:

. Heard. Rule. Rule is made returnable forthwith with the consent of the parties.

2. Mr. Pandey, Learned counsel for the Petitioner seeks time to file rejoinder. Ad-interim relief was granted vide order dated 9/8/2017. It is pertinent to note that stay was granted at the stage when the matter was posted for judgment. The Petitioner herein had filed Writ Petition No.282/2017 before this Court wherein the order under challenge was “no cross”. The Petitioner happens to be Defendant Nos.5 in Special Civil Suit No.6/2010. On 28/3/2010 the Defendant had filed his say below Exh.27 which was an application filed by the Plaintiff seeking injunction under Order 39 Rule 1 and 2. On 28/2/2011 there was an objection by the present Petitioner to grant temporary injunction. The application was rejected and was carried in Misc. Appeal.

3. The Appellate Court had allowed the Misc. Civil Appeal vide order dated 21/3/2011. Issues were framed on 22/12/2011. The Defendant Nos.1 and 2 had filed their affidavit in lieu of examination in chief. On 26/11/2013 the Plaintiff had filed an application for closing the evidence. On 11/3/2014 the Defendant Nos.5 and 6 had partly cross examined the witnesses of Defendant Nos.1 and 2 and thereafter filed an application seeking adjournment which was rejected. Thereafter there was an order saying no cross which was passed on 15/7/2014. The order was recalled. In the meanwhile, the Petitioner had only sought adjournment and protracted the proceedings. Cross examination of Defendant Nos.1 and 2 was concluded. On 4/10/2016 the suit was posted for final argument and the Plaintiff and Defendant Nos.1 to 4 had proceeded with the arguments. Defendant Nos.5 and 6 had filed an application seeking adjournment. The Petitioner had also filed WP No.282/2017 which was dismissed by the High Court on 8/7/2014. On 7/3/2017 the Defendant had again filed an application below Exh.169 seeking liberty to file Written statement by setting aside no written statement order. The said application was rejected on 4/7/2017. Hence the present petition.

4. It is a matter of record that the Petitioner had made every possible attempt to protract the proceedings. On 9/8/2017 this Court had granted ad-interim relief in terms of prayer clause (e).

5. Mr. Suryawanshi, Learned counsel for the Respondents submits that the matter is posted before the lower Court on 7/11/2017 for judgment. Hence, it would not be appropriate to stay further proceedings especially after observing that the Defendant have kept no stone unturned in protracting the proceedings.

6. The case is posted for judgment. The final arguments by the

Plaintiff as well as Defendant Nos.1 to 4 are concluded and at this stage it would not be appropriate to consider the prayer of Defendant Nos.5 and 6 seeking relief of filing written statement at the far end of trial. The Trial Court has rightly observed that the permission to file written statement cannot be granted at the belated stage. Learned Trial Court has observed that the Defendants could neither be permitted to cross examine the Plaintiff. The record clearly shows that the present Petitioner had actively participated in the proceedings since inception and therefore there was no reason not to file written statement.

7. In the earlier round before this Court the Petition was dismissed. Hence, the Petition being *sans merit* stands dismissed. Needless to state that the interim relief granted vide order dated 9/8/2017 stands vacated.

8. Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)