

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

WRIT PETITION NO.11863 OF 2016

Chitrakoot Textiles Pvt. Ltd. ... Petitioner
Vs
Inland Road Transport (Pvt.) Ltd. ... Respondent
...

Mr. G. G. Dave for the Petitioner.
Ms. L. Temkar i/b. Kalyani, G. Parmar for the Respondent.

CORAM : M. S. SONAK, J.
DATE :24 NOVEMBER, 2017

P.C. :

1. Heard Mr. Dave for the Petitioner. Mr. Dave states that he appears for the Petitioner before the trial court and therefore, has authority to represent the Petitioner before this Court.
2. Ms. Temkar appears for the Respondent.
3. The challenge in this petition is to the order dated 15th February 2016, by which the learned Trial Judge has dismissed the Petitioner's Application at Exh. 94.
4. The reliefs applied for by the Petitioner in the application at Exh. 94 read as follows:

“The Plaintiff hereby prays that:-

a) Order dated 14.12.2015 be set aside in the interest of

- justice;*
 b) *Plaintiff Affidavit in Support of Evidence be taken on record for proving, marking and exhibiting the same;*
 c) *any other reliefs as the nature and circumstances of the case may require deem fit and proper;”*

5. The reason set out in the application for seeking such reliefs is that there was a change in the Advocate and therefore, in the interest of justice, leave be granted to file an additional affidavit. For this purpose, it is proposed to recall PW-1 in order to prove the document which accompany this additional affidavit.

6. Ms. Temkar, the learned counsel for the Respondent points out that the Petitioner is unnecessarily protracting the suit. She points out that in the past, on the very same ground, two affidavits were filed. Despite such indulgence, leave is applied for to file yet another affidavit. She submits that the learned trial judge has correctly appreciated the situation and rejected the application at Exh. 94.

7. From the perusal of the record, it does appear that there is merit in the contention of Ms. Temkar. The petitioner, should have been more diligent. Simply stating that there is a change of the Advocate is not sufficient to repeatedly file affidavits. Though, this is the position, considering the facts and circumstances of the present case, rather than

involved multiplicity, some indulgence can be shown to the Petitioner subject of course to the payment of exemplary costs.

8. Mr. Dave's contentions that a party should not suffer on the ground of any fault and lapse on the part of his Advocate may be well taken. However, it is not the law that on account of false or lapse on the part of Plaintiff's Advocate, the Defendant must suffer. In this case, the matter has been unduly protracted for no fault on the part of the defendants. The interference is only so that the Plaintiff is not deprived of opportunity to produce all the evidence available with the Plaintiff. The opportunity now being granted is only to prevent multiplicity of proceedings.

9. Accordingly, the impugned order is set aside. The Petitioner's Application at Exh. 94 dated 15th February 2016 is allowed in terms of prayer clauses (a) and (b). PW-1 is permitted to be recalled and shall depose in support of the additional affidavits and the document accompany the same. All this shall be subject to the Petitioner paying costs of Rs.50,000/- to the Respondent within a period of four weeks from today. The costs to be directly paid to the Respondent or deposited before the trial Court within a period of four weeks from today. If such costs are indeed

deposited, the Respondent shall be at liberty to withdraw the same unconditionally.

10. In case, the amount of costs are not deposited within a period of four weeks from today, this petition shall be deemed to have been dismissed with costs of Rs.15,000/-. The Trial Court to ensure that such costs are recovered from the Petitioner before the Petitioner participates further in the suit.

11. Mr. Dave the learned counsel for the Petitioner states that no extension of time will be applied for to deposit the amount of costs. In any case, it is made clear the learned trial court will not entertain any request for extension of time.

12. The Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

13. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)