

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

WRIT PETITION NO. 11073 OF 2015

Vishnu Dynanu Mane

..Petitioner.

Vs

Smt.Shobha Sarjerao Patil
(Mane) and Ors.

.. Respondents

Mr. Sandeep S.Koregave, Advocate for Petitioner.

Mr. Mithun Mahajan, Advocate for Respondents no. 1 and 2.

CORAM : R.G.KETKAR,J.

DATE : 10/01/2017

PC:

1. Heard Mr.Sandeep Koregave, learned counsel for the petitioner and Mr.Mithun Mahajan, learned counsel for respondents no.1 and 2 at length. Rule. Mr.Mahajan waives service. Having regard to the narrow controversy raised in the petition as also at the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as plaintiff, has challenged the Judgment and order dated 18.8.2015 passed by the learned 2nd Jt.Civil Judge, Sr. Dn., Kolhapur in Misc.Civil Appeal No.342 of 2012. By that order, the learned trial Judge rejected the application made by the plaintiff under Order IX, Rule 4 of C.P.C. for restoring the suit.

3. Plaintiff instituted suit, inter alia, praying for specific performance of contract as also injunction restraining the defendants from creating third party interest in any manner whatsoever. On 31.8.2012, the suit was dismissed in default. On 25.9.2012, the plaintiff filed application under Order IX, Rule 4 of C.P.C. for restoration of the suit which was rejected by the impugned order. The matter was heard at length on 19.12.2016 and the matter was adjourned at the request of Mr. Koregave so as to enable him to produce:

- (i) list of witness proposed to be examined by the plaintiff;
- (ii) duly affirmed affidavit in examination in-chief of the plaintiff;
- (iii) within what time the plaintiff will keep the affidavit in examination-in-chief of his witnesses ready.

4. In pursuance thereof, Mr Koregave states that the plaintiff wishes to examine three witnesses, namely, Plaintiff-Vishnu Mane, Rajaram Mahadeo Mane and Narayan Mahipati Mane. He further states that within two weeks from today, the plaintiff will file his affidavit in examination-in-chief as per order XVIII, Rule 4 and shall serve copy in advance on the respondent's Advocate. Within four weeks from today, he will also file affidavits in examination-in-chief of Rajaram Mahadev Mane and Narayan Mahipati Mane, other two witnesses of the plaintiff, and serve copy in advance on the respondent's Advocate. He further states

that the plaintiff does not desire to examine any other witness. Statements made by Mr. Koregave, on instructions are recorded.

5. In view thereof, impugned order dated 18.8.2015 is set aside and the suit is restored to the file of the trial Court. Plaintiff shall file affidavit in examination-in-chief of himself within two weeks from today and serve copy in advance on the other side. Plaintiff shall file affidavits in examination-in-chief of other two witnesses, namely, Rajaram Mane and Narayan Mane within four weeks from today and serve copy in advance on the other side.

6. Rule is made absolute in the aforesaid terms with no order as to costs.

7. Parties including the trial Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)