

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9996 OF 2013

Shree Balaji Udyog

...Petitioner

Vs.

Mrs. Shobhana Dinkar

Sawant and Ors.

...Respondents

Mr. S.S. Kulkarni for Petitioner

Mr. Kamalesh Mali for Respondents

CORAM: M.S.SANKLECHA, J.

DATE : 6th SEPTEMBER, 2017.

P.C:-

1. As the controversy is very a narrow, at the request of the parties, petition is taken up for final disposal at the stage of admission. It is to be noted that on 28th October, 2013 at the time of issuing notice for admission the proceeding before the trial Court had been stayed.

2. This petition challenges the order dated 21st September, 2013 passed by the Joint Civil Judge, Junior Division, Pune. The impugned order rejects the Petitioner's application to set aside / recall the order dated 22nd August, 2013 passing a No-cross order, thus closing the evidence of Respondent No.1 herein (Original Plaintiff No.1 in the suit) without his being cross examined.

3. The Petitioner in his application dated 21st September, 2013 seeking recall of the order dated 27th August, 2013 of No-cross specifically point out that when the matter was first called out for the cross examination of the Respondent No.1 (Original Plaintiff No.1), the advocate appearing for the Petitioner was on his legs before another Court. Thus the matter was kept back. At 1.40 p.m. the matter was again called out. However, as the Petitioner's advocate was not present the No-cross order of Respondent No.1 herein, was passed. At approximately, 1.42 p.m. on that date, the advocate for the Petitioner appeared before the Court and sought recall of No-cross order and sought permission to cross examine Respondent No.1 herein. However, the same was refused. Thus leading to the application dated 21st September, 2013.

4. The impugned order does not deal with the facts set out in the application, particularly the fact that the advocate appearing for the Petitioner was late in coming to the court as he was on his legs before the another Court and an application for recall of the No-cross order was made after two minutes after the No-cross order was passed. However, the same was not acceded to by the learned Judge on that date. The impugned order rejects the application for recall of No-cross order entirely on the basis of the earlier conduct of the Petitioner during the trial resulting in delay in the proceeding. However, the impugned order is a non-speaking order. The impugned order has necessarily to deal with the application explaining the reasons for the absence/ delay in attending the matter on 21st August, 2013 leading to the No-cross order earlier on that day. The earlier conduct of the advocates and/or the Petitioner cannot be taken consideration for non-consideration of reasons set out in the application dated 21st September, 2013. Even if it is presumed that the

Petitioner is deliberately delaying the proceedings as is evident from the earlier conduct would not by itself result in rejecting the Petitioner's applications dated 21st September, 2013 explaining the absence of his advocate on 22nd August, 2013.

5. The Courts of law are meant to do justice between the parties and very hyper technical view which manifestly results in gross injustice is not to be adopted by the Courts. No prejudice is shown to have been caused to the Respondent if the No-cross order was recalled and the petitioner was allowed to cross examine Respondent No.1. In the above view, the impugned order dated 21st September, 2013 is quashed and set aside and the petitioner's application dated 21st September, 2013 to recall the order dated 22nd August, 2013 is allowed.

6. In the above view, the parties to appear before the learned trial Court on 3rd October, 2017 at 11.00 a.m. which is seized of the suit No. RCS 860 of 2009. At that time, the trial Court to fix a fresh date for cross examination of Respondent No.1 and to proceed to hear the suit from that stage. As the matter relates to the year 2009 and the Plaintiff are the senior citizens, the learned Trial Court is requested to expeditiously dispose of the suit, preferably within six months from today. Petition is allowed in above terms. No order as to costs.

Parties to act on a copy of the order authenticated by the Registry of this Court.

(M.S.SANKLECHA,J.)