

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.610 OF 2017

Kisan Yashvant Wadghule ... Petitioner
Vs.
Samadhan Vasant Yalwande and others ... Respondents

Mr. Sachin B. Chandan for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : MARCH 01, 2017

P.C. :

Heard Mr. Chandan, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner-defendant has challenged the judgment and order dated 25.10.2016 passed by the learned 2nd Joint Civil Judge, Junior Division, Daund below exhibit-100 in Regular Civil Suit No.27 of 2012. By that order, the learned trial Judge dismissed the application made by the defendants No.1 to 3 for setting aside no cross order.

3. On 18.08.2016, defendants No.1 to 3 filed application exhibit-100 for setting aside no cross order passed on 21.07.2016 on the ground that the matter was fixed on 18.08.2016 for cross-examination of the plaintiff. Prior to that, on 21.07.2016, matter was fixed for cross-examination of the plaintiff. However, on that date, defendant was not well and consequently, could not attend the Court. As no information was received by the defendants as also necessary documents were not supplied, plaintiffs' cross-examination could not be conducted. As such, the learned trial Judge passed no cross order against the defendants. Defendants No.1 to 3 therefore, filed application for setting aside no cross order.

4. Plaintiffs filed reply exhibit-105 opposing application inter alia contending that defendants did not produce any material to substantiate their case that on 21.07.2016, defendant was not well. Even earlier, no cross order was passed against the defendants. Despite giving several opportunities to defendants, they did not cross-examine the plaintiffs. The application is made only with a view to delaying the proceedings. By the impugned order, the learned trial Judge rejected the application. It is against this order, defendants No.2 has instituted the present Petition.

5. In support of this Petition, Mr. Chandan submitted that opportunity may be given to the defendants to cross-examine the plaintiffs. If opportunity is not given, serious prejudice will be caused to the defendants. He submitted that the impugned order may be set aside subject to imposing conditions on the defendants and defendants may be permitted to cross-examine the plaintiffs.

6. I have considered the submissions advanced by Mr. Chandan. I have also perused the material on record. Perusal of paragraph 4 of the impugned order shows that plaintiffs had filed affidavits of examination-in-chief at exhibits-48 and 86 of P.W.1 and P.W.2. On 15.04.2015, the learned trial Judge passed order below exhibit-84 to the effect 'no cross order'. Thereafter, the no cross-order was set aside by passing order below exhibit-87 and defendants were given opportunity to cross-examine the plaintiffs' witness. However, defendants did not cross-examine plaintiffs. On 14.01.2016, the learned trial Judge passed 'no cross order' on affidavits at exhibits-48 and 86. Despite giving several opportunities to the defendants, no application giving valid reason was made for setting aside no cross order. Even on 21.07.2016, matter was fixed for cross-examination of the plaintiffs' witness. Even on that date,

defendants' Advocate did not cross-examine plaintiff's witness.

7. During the course of hearing, I called upon Mr. Chandan to substantiate the reasons set out in the application at exhibit-100 to the effect that defendant was not well. He is unable to produce any medical certificate to substantiate that on 21.07.2016, defendant was not well. Perusal of application exhibit-100 shows that, it is bereft of any particulars. The said application merely asserts that necessary documents could not be supplied and consequently, plaintiffs could not be cross-examined. However, which documents according to the defendants are material was also not disclosed. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. For the reasons stated in paragraph 4 of the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. In fact, the learned trial Judge also observed that the only object of the defendants is to delay the proceedings. Hence, Petition fails and the same is dismissed.

8. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)