

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 287 OF 2017
WITH
WRIT PETITION No. 288 OF 2017

Deepak Jayantibhai Dodhia ... Petitioner
Vs.
Savitaben Jagjivandas Morjaria & Ors. ... Respondents

Mr. Omkar Nagvekar i/b. Prabha Uday Badadare, Advocate for the petitioner in both the Petitions.

Mr. V.S. Pandey i/b. Mr. S.U. Pandey, Advocate for respondent No. 1.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 3rd May, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, both these Writ Petitions are heard finally and disposed of at the stage of admission.

2. The petitioner/original defendant no. 1 in Suit No. 7053 of 2006 (High Court Suit No. 2775 of 2006) has challenged the two orders of the City Civil Court, i.e., order dated 2nd December, 2016 of no cross-examination passed against the defendant in Writ Petition No. 287 of 2017 and order dated 21st November, 2016 of dismissing the Notice of Motion No. 2464 of 2016 and Chamber Summons No. 1764 of 2016 for default in Writ Petition No. 288 of 2017.

3. In Writ Petition No. 277 of 2017, the respondent no. 1/plaintiff has filed the suit for declaration that the Agreement is null and void and is not binding on the respondents. During the pendency of the suit, the affidavit-in-chief of the plaintiff is taken on record and the matter was fixed for cross-examination of the plaintiff on 8th December, 2015, however, the learned counsel for the petitioner/defendant was not present and hence, no cross order was passed. Subsequently, the said order was set aside and was restored on the Chamber summons filed by the petitioner/defendant. Again, the matter was fixed for cross-examination of the plaintiff on 2nd December, 2016 and on the same day again, the learned counsel who was supposed to take cross-examination remained absent and at that time, the learned counsel who was present and representing the defendant was not willing to go head with the cross-examination. So, the learned Judge passed the order of no cross and the impugned order is under challenge.

4. In Writ Petition No. 288 of 2017, Notice of Motion was taken out by the respondents under Order 7 Rule 11 challenging the jurisdiction of the Civil Court, as the Cooperative Court is the proper Court having the jurisdiction and Chamber Summons was taken out for

framing additional issue. However, on 21st November, 2016, when both the proceedings were called out, again the learned counsel who was supposed to argue the matter was not present and the learned counsel who was representing the defendant could not proceed and therefore, the Notice of Motion and Chamber Summons were dismissed on that day.

5. The learned counsel for the petitioner submitted that by the order of this Court dated 20th January, 2017, the petitioner has deposited Rs.5,000/- in this Court towards the cost. He submitted that the opportunity is to be given to the petitioner/defendant no. 1 to take the cross-examination of the respondent no. 1/plaintiff and so also Notice of Motion and Chamber Summons is to be heard and the said orders dated 22nd November, 2016 and 2nd December, 2016 are to be set aside. He submitted that the learned counsel Mr. Arjunwadkar, who is instructed to argue the Notice of Motion and Chamber Summons to cross-examine the witness, is out of India and will be available after 26th June, 2017.

6. The learned counsel for respondent no. 1 opposed both these Petitions and submitted that considering the age of the plaintiff/respondent No. 1, the matter is to be heard at the earliest

and the trial Court has already passed the order to expedite the matter.

7. In view of these submissions and the orders passed therein, I allow these Writ Petitions and set aside the orders passed by the trial Court. The petitioner/original defendant no. 1 to take note that this is the last chance given to the petitioner to proceed with the matter, being the time bound programme. Now the matter is fixed before the trial Court on 27th June, 2017. Both the parties and their counsel shall remain present before the trial Court on 27th June, 2017. The plaintiff shall be cross-examined by the counsel. The trial Court is directed to complete the cross-examination of the plaintiff on or before 1st July, 2017. Thereafter the trial Court may proceed to hear Notice of Motion and Chamber Summons.

8. This order is subject to payment of additional cost of Rs.5,000/- which is to be deposited in this Court on or before 5th May, 2017.

9. Writ Petitions are allowed.

(MRIDULA BHATKAR, J.)