

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APEAL FROM ORDER NO. 1 OF 2018
WITH CA/179/2018 IN AO/1/2018

SUBHASH DODHU BHANDARKAR
VERSUS
JANKIRAM ATMARAM BHANDARKAR (DEAD) THROUGH HIS L.RS.
ARVIND JANKIRAM BHANDARKAR A

...
Advocate for Appellant : Mr. P. B. Patil.
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CORAM : K.K. SONAWANE, J.

DATED : 5TH JANUARY, 2018.

Order :-

Heard Mr. P. B. Patil, learned counsel for the appellant.

2. Perused appeal memo and other relevant documents produced on record including findings of learned District Judge-2, Amalner, District Jalgaon, in Civil Appeal No. 77 of 2012 dated 21-11-2017.

3. According to learned counsel for appellant, the Civil Appeal No. 77 of 2012 filed by respondents (original defendants) came to be allowed and the Decree passed in Special Civil Suit No. 70 of 1989 was set aside and quashed. It was directed to relegate back the proceedings to the Court of Civil Judge, Senior Division, Amalner, for trial afresh with opportunity to the plaintiffs to adduce their evidence within stipulated period i.e. up-till 22nd December, 2017. Learned counsel contends that the matter is old with bulky record and it would difficult for the appellant (plaintiff) to adduce the evidence within prescribed period, allowed by the District Court. Therefore, original plaintiffs filed the application (Exh.-91) before the concerned District Judge, Amalner, for extension of time. After considering the difficulties propounded on behalf of appellant (plaintiff), the time to adduce evidence was extended till 5th January 2018 i.e. up-till today.

4. At this juncture, the learned counsel for appellant fervidly contends that the original plaintiffs are ready to adduce their evidence before the concerned Trial Court subject to condition that the sufficient time may be granted to them as the matter pertains to old bulky record and most of the record is still untraceable up-till this date. The learned counsel added that, in case, extension of one month time is granted to the original plaintiffs, they would comply with the Order passed by the concerned District Judge in Civil Appeal No. 77 of 2012. The learned counsel for appellant fairly made statement at bar that the appellant has no any grievance about rest of the findings expressed by the concerned District Court in the appeal. The purpose of filing the present appeal is only to get extended the reasonable and sufficient time to adduce the evidence on behalf of appellant (original plaintiff) before the learned Trial Court. Therefore, he requested for extension of time to lead evidence before the concerned trial Court.

5. Having anxious consideration to the arguments canvassed on behalf of learned counsel for appellant and the findings expressed by the learned District Court, Amalner, in Civil Appeal No. 77 of 2012, it reveals that matter pertains to the immovable property in regard to partition of contentious suit property involved in the litigation. Therefore, reasonable opportunity is essential to be granted to the appellant to adduce evidence into the matter as directed by the learned District Court. Admittedly, the time was granted initially up till 22nd December, 2017 to the plaintiff/s to lead evidence before the Trial Court, which came to be extended later on up-till 5th January, 2018. In case, further period of one month is granted to the plaintiff/s for adducing evidence into the matter, it would not cause any injustice or prejudice to other side. In contrast, it would sub-serve the purpose for substantial justice as well as for expeditious adjudication of dispute on merit into the matter.

6. This Court is aware that prior to any order passed in the nature of finality of the issue raised in the appeal, the notices to respondents are essential to be issued to afford an opportunity to traverse the contentions propounded on behalf of appellant. Moreover,

the principles of natural justice also contemplates not to adjudicate the point of controversy unilaterally in absence of other side in the proceedings. However, in the present appeal, points for deliberation only pertains to extension of period to lead evidence on behalf of appellant (original plaintiff) before the learned trial Court in the original proceedings of Special Civil Suit No. 70 of 1989. Moreover, learned District Court, Amalner, granted extension of time to appellant (original plaintiff) up-till 5th January, 2018, and in case no any further extension is granted, the right to adduce the evidence on behalf of appellant (original plaintiff) would be fortified pursuant to the order passed by the learned District Judge-2, Amalner, District Jalgaon, in Civil Appeal No. 77 of 2012.

7. Obviously, the attending circumstances constrained to allow the extension of time to adduce the evidence in the proceedings on behalf of appellant (original plaintiff). In case the period is extended as prayed on behalf of appellant (original plaintiff), the very purpose of filing the present appeal would be fulfilled and nothing left for deliberation and adjudication on merit in the present appeal. In such circumstances, instead of issuing notice to the respondents for their appearance in the present proceedings, it would justifiable to dispose of the appeal finally in absence of respondents by allowing the extension of time as prayed in the present matter. Definitely, it would not cause any prejudice or injustice to the respondents. In contrast, it would sub-serve the purpose for expeditious hearing to get substantial justice into the matter at the earliest.

8. Therefore, instead of keeping the present proceedings in abeyance for appearance of the respondents, the present proceedings of appeal is hereby disposed of finally with directions that the appellant (original plaintiff) shall adduce his evidence before the concerned trial Court as directed by the learned District Judge, Amalner, in Civil Appeal No. 77 of 2012 within a period of one month i.e. 8th February, 2018. The learned trial Court to take note about the same and in case the appellant (original plaintiff) fails to adduce the evidence up-till 8th February, 2018 in the proceedings, his right to lead evidence in Special

Civil Suit No. 70 of 1989 be ordered to be forfeited and the concerned trial Court shall proceed further for adjudication of the matter in issue on merit as per directions issued by the concerned District Judge, Amalner, in Civil Appeal No. 77 of 2012. Moreover, in case, plaintiff adduced his evidence within stipulated period, the reasonable opportunity be given to the defendants/ respondents to adduce their evidence, if any, within a month after closing of the evidence of plaintiff to be adduced up-till 8th February, 2018. In case, the defendants / respondents failed to adduce their evidence within stipulated period of further one month, the requisite order be passed to forfeit their right by considering the attending circumstances on record.

9. It is desirable that learned trial Court shall take endeavor to adjudicate the proceedings expeditiously at the earliest possible, by the end of July-2018. Accordingly, appeal stands disposed of in above terms by requisite modification as mentioned above in the order passed by the learned District Judge-2, Amalner, District Jalgaon, in Civil Appeal No. 77 of 2012 dated 21-11-2017. In view of disposal of appeal in above terms, the pending civil application does not survive and stands disposed of accordingly.

[K. K. SONAWANE]
JUDGE

rrd.