

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

**WRIT PETITION NO. 773 OF 2017**

Dastgir Hussain Shaikh and others    .. **Petitioners**  
**Versus**  
Chamanbee Shabbir Shaikh and others    .. **Respondents**

Ms. Madhuri U. Kakade i/b. M/s. Lex Aquila,  
Advocate for the Petitioners.  
Mr. Anandsingh Bayas, Advocate for Respondent  
No. 1.  
Respondent Nos. 2 and 3 served.

**CORAM: S. V. GANGAPURWALA, J.**

**DATE: 16<sup>th</sup> August, 2018**

**PER COURT :**

1. The petitioners are the original defendants. The respondent no. 1 has filed the suit for partition and separate possession. The plaintiff led his evidence. Thereafter the defendants led the evidence and examined three witnesses. The defendants filed an application Exhibit 141 for examining more witness. The said application is rejected.

2. The learned advocate for the petitioner submits that the son of the petitioner was under medical treatment and as such petitioner could not take steps to lead the evidence. The evidence of

the said witness is necessary.

3. Mr. Bayas, the learned counsel submits that suit is filed in the year – 2013. The plaintiff has closed his evidence long back. Even defendant no. 5 had led the evidence and when the matter was fixed for final arguments the present application was given seeking additional evidence. The court has considered all these aspects and has rightly rejected the application since opportunity was given to the petitioner.

4. I have considered the submissions canvassed by the learned counsel for respective parties.

5. Considering that the suit is a substantive suit for partition and separate possession and considering the reasons given in the application I am inclined to grant one more opportunity to the petitioner to adduce evidence of witness. However, the petitioner also deserves to be mulct with costs for the delay that has been caused because of the petitioner.

6. In the light of above, the impugned order is quashed and set aside. The petitioner is allowed to adduce further evidence. The petitioner shall produce the witness on their own before the Trial Court. The petitioner shall produce the witness on the next date fixed before the Trial Court

without any demur. The petitioner shall not take any adjournments for adducing the evidence. The impugned order is set aside on the condition that the petitioner pays costs of Rs. 5,000/- (Rs. Five Thousand only) to respondent no. 1 on or before the next date before the Trial Court. Payment of costs is a condition precedent. Failure to lead evidence as suggested above will entitle the court to proceed further.

7. Writ Petition accordingly stands disposed of. No further costs.

**[S. V. GANGAPURWALA, J.]**

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