

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6554 OF 2015

Smt. Geeta Panditrao Aswar
Age 57 years, Occ. Trade and
Agriculture, R/o Plot No.17,
Parijat Nagar, N-5 Cidco,
Aurangabad.

..Petitioner

Versus

1. Smt. Shashikala Chandrakant
Joshi, Age 74 yeas, Occ. Agriculture
and Household, R/o House No.1-29-66,
Kachiwada, Chelipura, Aurangabad.

2. Chandrahas Chandrakant Joshi
(Charekar), Age 58 years,
Occ. Agriculture, R/o House No.1-29-66,
Kachiwada, Chelipura, Aurangabad.

3. Chandranil Chandrakant Josh
(Charekar), Age 56 years,
Occ. Agriculture, R/o House No.1-29-66,
Kachiwada, Chelipura, Aurangabad.

4. Rajan Chandrakant Joshi
(Charekar), Age 51 years, Occ. Agri.,
R/o Flat No.6, Building No.10,
SBI Staff Quarters, N-7, Near Ambedkar
Chowk, Cidco, Aurangabad.

5. Nitin Chandrakant Joshi
(Charekar), Age 54 years, Occ. Service
Manager - Safety, Health and Processing
Improvement, M/s Johnson & Johnson,
Medical Division, B-15-1, MIDC,
Waluj, Aurangabad.

6. Mrs. Rekha Laxmikant Barbind
Age 50 years, Occ. Household
Flat No.3, Shubham Sankul,
Behind Shubham Hostel,
Peer Bazar, Aurangabad.

..Respondents

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Advocate for Petitioners : Shri Katneshwarkar P.R.
a/w Shri Patunkar Swapnil S. i/b J.P.Legal Associates
Advocates for Respondent 1 : S/Shri Tribhuwan & Deshpande K.B.
Advocate for Respondents 2 to 6 : Shri Palodkar D.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 20, 2018

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ORAL JUDGMENT:-

1. Heard learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
4. The petitioner / original plaintiff is aggrieved by the order dated 20.11.2010 passed by the trial Court, by which, her Special Civil Suit No.172 of 2006 has been dismissed in default. The petitioner is also aggrieved by the order dated 20.11.2010 passed by the trial Court on application Exhibit 49, which was filed by the petitioner, on the same day on which the suit was dismissed in default. The petitioner is also aggrieved by the judgment of the appellate Court, dated 6.4.2016, by which, MCA No.122 of 2012, filed by the petitioner, has been dismissed.

5. I have considered the strenuous submissions of the learned Advocates for the respective sides, who have canvassed a host of factors. Keeping in view the cause action before me, I am not required to advert to their entire submissions.

6. There is no dispute that the plaintiff did not lead evidence on six dates in between July 2010 till 20.11.2010. An application Exhibit 39 dated 20.11.2010, was filed by all the defendants praying to the Court that the suit may be dismissed for want of prosecution. The Advocate for the plaintiff, through his colleague, has putforth a say that the Advocate has proceeded for a medical test and is out of station and one opportunity may be granted to lead the oral evidence on the next date. The trial Court has passed the impugned order concluding that as the plaintiff has not led evidence for six dates, the suit deserves to be dismissed. Accordingly, the suit was dismissed in default.

7. After the above order was conveyed to the plaintiff, it appears that she has rushed to the Court in the afternoon on the same day and filed an application Exhibit 40, supported with an affidavit Exhibit 41, in which, an apology has been tendered and an assurance has been given to the Court that on the next date, the affidavit in lieu of examination-in-chief would be filed. The trial Court has rejected the said application on the same date at 5.00 pm, by concluding that the

plaintiff has made a false statement and that the plaintiff is prolonging the matter, which was only four years' of age.

8. Learned Advocate for the defendants submits that as the suit is for seeking specific performance of contract, the plaintiff is deliberately delaying the matter. Several factors are narrated to contend that the delay is intentional and deliberate. It is further pointed out that as on date, these litigating sides have lost eight valuable years and the price of the land has hit the roof. It is, therefore, stated that this petition be dismissed with heavy costs.

9. In my view, in matters of such nature, where a litigant moves an application on the same date seeking recalling of the DID order, the trial Court should resort to a pragmatic approach rather than taking a pedantic view, unless the factors cited are so gross so as to draw a conclusion that the concerned litigant has deliberately and intentionally caused an inordinate delay. No such conclusions are drawn by the trial Court, inasmuch as, the suit was just four years' of age. It is unfortunate that had the trial Court has not taken a pragmatic view on 20.11.2010. By imposing certain conditions on the plaintiff and by granting a last chance or by imposing costs a last chance should have been granted. These eight years, thereafter, would have been utilized for deciding the suit. The trial Court has not observed in its DID order that a last chance

was already granted to the plaintiff. The only reason assigned is that the plaintiff has not led evidence for six dates.

10. While arriving at the above conclusions, I have kept in mind that if the suit is not restored, despite the fact situation as above, the plaintiff would suffer an irreparable harm and loss. The doors of litigation would be completely closed on the plaintiff and she would be rendered remediless in so far as the cause of action is concerned.

11. In the above backdrop, though this petition deserves to be allowed, it cannot be ignored that the plaintiff is the Architect of this situation and therefore, needs to be mulled with costs so as to reduce the rigours of litigation suffered by the defendants.

12. As such, this petition is partly allowed. The impugned orders dated 20.11.2010 on applications Exhibits 39, 40 and 41 and the impugned judgment dated 6.4.2015 stand quashed and set aside. Special Civil Suit No.172 of 2006 is restored to the file of the learned Civil Judge (S.D.), Aurangabad on the following conditions:-

(A) By consent of the parties, the said suit is expedited and the trial Court shall decide the said suit as expeditiously as possible and in any case on/or before 28.2.2019.

(B) All the litigating sides would appear before the trial Court on 4.8.2018.

(C) The plaintiff shall produce a print out copy of this judgment taken from the official website of this Court, before the trial Court.

(D) Since I was inclined to impose a total costs of Rs.50,000/- on the petitioner / plaintiff, all the learned Advocates appearing on behalf of the respective sides have graciously stated that the six defendants would share Rs.30,000/- in equal proportion and Rs.20,000/- may be donated for the treatment of poor patients.

(E) As such the amount of Rs.30,000/- shall be deposited by the plaintiff before the trial Court on 4.8.2018 and the defendants shall take equal shares ,without conditions, as costs.

(F) The petitioner shall deposit on/or before 15.8.2018 an amount of Rs. 20,000/- (Rs. Twenty Thousand only) with the Government Medical College and Hospital, Aurangabad, through Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft (Demand Draft be drawn in the name of “Dean, Government Medical College and Hospital, Aurangabad - CSR Fund”) and shall report compliance of this direction by producing a receipt of having deposited the amount, before the trial Court on or before 20.8.2018. If the said receipt is not produced, the defence of the plaintiff will be struck off.

(G) An affidavit in lieu of examination-in-chief shall be filed by the plaintiff before the trial Court on 4.8.2018 and shall not seek any adjournment.

(H) The plaintiff as well as the litigating sides shall extend their cooperation for the expeditious disposal of the suit and shall refrain from seeking adjournments on unreasonable and trivial grounds and the trial Court would be at liberty to impose costs on such adjournment applications, if convinced.

(I) All the contentions of the litigating sides are kept open for the trial Court to consider.

13. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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