

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10438 OF 2018
(Babasaheb s/o Pandhari Gund Vs. Subhash Baburao Gaikwad)

Mr.S.A.Gaikwad, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 09/10/2018

PER COURT :

1. The petitioner/original defendant is aggrieved by the order dated 06/07/2018, passed by the Trial Court thereby rejecting his application Exh.68 filed in RCS No.24/2014.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner who has drawn my attention to the 7 grounds formulated in the memo of the petition.

3. I find a disturbing feature in this petition, that too when the conduct of the petitioner is gross and negligent. Two main grounds have been canvassed in this petition.

4. Firstly, that the Judge has scored out a word in the order dated 13/06/2018 with an attempt to show that the plaintiff and his

Advocate were present, though they were absent. This contention is virtually an allegation against a Judge of the Trial Court. I, therefore, called upon the petitioner as to whether he was willing to file an affidavit of the petitioner in support of his allegations. I cautioned him that if the allegation made turns out to be false, heavy costs would be imposed on the petitioner besides initiating appropriate proceedings against the petitioner. Learned Advocate for the petitioner submits that the petitioner would not make such an allegation.

5. Learned Advocate for the petitioner submits on instructions that he is withdrawing the allegation levelled against the Trial Court Judge under Ground No.2 and seeks leave to delete the said ground. Deletion is permitted and to be carried out forthwith.

6. The second ground canvassed is that the Trial Court did not give sufficient opportunity to the petitioner to cross examine the second witness of the plaintiff.

7. In the backdrop of the submissions of the petitioner/defendant, I deem it appropriate to record the sequence of events as under :-

[a] A “no cross” order was initially passed on 07/03/2017 after the petitioner did not cross examine the plaintiff's witness for 3 weeks.

[b] Application Exh.49 was filed by this petitioner on 25/04/2017 praying for leave to cross.

[c] By a reasoned order dated 06/05/2017, the Trial Court allowed the application subject to costs of Rs.500/-.

[d] The said order was not complied with and hence application Exh.51 was rejected.

[e] The petitioner approached this Court in WP No.9994/2017 which was allowed subject to additional costs of Rs.1,000/-. It was observed in the order dated 31/12/2017 that this petitioner is negligent.

[f] Yet the petitioner did not cross examine the plaintiff's witness and finally the order dated 13/06/2018 was passed after recording that the petitioner/defendant is negligent and is not complying with the directions of the High Court.

[g] In the above backdrop, application Exh.68 filed by the petitioner was rejected by the impugned order.

8. Considering the above, it is apparent that despite several orders of the Trial Court, and an order of this Court permitting the petitioner to proceed with the cross examination, the petitioner has been grossly negligent and appears to have no interest in the litigation. I do not find any reason to brand the impugned order as being perverse or erroneous keeping in view that 37 dates over a

period of about 20 months did not encourage the petitioner to cross examine the witness.

9. In view of the above, this petition, being devoid of merit, is therefore, dismissed.

Kranti
Hansraj
Shekatkar

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Krant Hansraj
Shekatkar
Date: 2018.10.10
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(Ravindra V.Ghuge, J.)