

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

WRIT PETITION NO. 8209 OF 2013

**PARASRAM MANIK PAWAR
VERSUS
ANIL VINAYAK PAWAR AND OTHERS**

...
Advocate for the Petitioner : Shri P. B. Vikhe h/f.
Shri R. R. Karpe
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 21st NOVEMBER, 2018.

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PER COURT :

1. I have heard the learned Advocate for the petitioner - original defendant No.2.
2. None appears for the respondents/original plaintiff and defendant Nos. 1 and 3.
3. The plaintiff has preferred RCS No. 497/2011 seeking perpetual injunction against the defendants, on 11/07/2011. The "No W.S." order was passed by the Trial Court against the petitioner - defendant No.2 on 05/12/2011. The petitioner and defendant No.1 preferred application Exhibit 39 on

02/04/2013 praying for recalling the "No W.S." order. Copy of the written statement was annexed to Exhibit 39 and was placed on record. By the impugned order dated 07/09/2013, the application Exhibit 39 filed by the defendant Nos. 1 and 2 was rejected.

4. The defendant Nos. 1 and 2 also suffered "No Cross Examination" order after the plaintiff led evidence. Both, therefore, filed application Exhibit 41 on 07/09/2013 praying to the Trial Court to recall the "No Cross" order and permit defendant Nos.1 and 2 to cross examine them. The Trial Court has rejected Exhibit 41 on the same date 07/09/2013.

5. The learned Advocate for the petitioner/defendant No.2 submits that he has no knowledge whether defendant No.1 Bhanudas, who is respondent No.2 herein, has preferred a similar petition or not. He concedes that the petitioner and respondent No.2 herein both have suffered "No W.S." order and the "No Cross Examination" order. Both have also suffered the impugned orders dated 07/09/2013 below Exhibits 39 and 41.

6. The learned Advocate further submits that an agricultural land admeasuring 53 R. is the suit property. Considering that an agricultural land is at issue, the petitioner herein is likely to suffer an irreparable harm and grave hardships if the impugned orders are not set aside since he would be losing his share of the agricultural land in the pending RCS No.497/2011. He submits that, no doubt this petitioner can be said to have not acted with promptitude, but it cannot be ignored that he would suffer an irreparable loss if his written statement is not accepted and he is not allowed to participate in the recording of evidence.

7. This Court (Coram : S. V. Gangapurwala, J.) had issued notice to the respondents on 07/10/2013 and on the condition that the petitioner shall deposit an amount of Rs. 10,000/- (Rupees ten thousand) in this Court, had stayed RCS No. 497/2011. The said amount has been deposited by the petitioner in this Court on 16/11/2013.

8. I find that this petitioner - defendant No.2 has adopted a

casual approach while participating in the pending suit. After the "No W.S." order was passed on 05/12/2011, he has moved Exhibit 39 on 02/04/2013 which is after about 16 months. Even when "No Cross" order was passed, Exhibit 41 was filed on 07/09/2013. Nevertheless, I do not find from the record that laches or oblique motives are attributed to the conduct of this petitioner. I also find that the petitioner would not derive any advantage by delaying the suit since he would, in fact, place himself in a precarious situation. It, therefore, does not appear that he has willfully or deliberately avoided filing his W.S. Costs could be imposed on the petitioner to be paid to the plaintiff in order to soften the rigors of litigation being suffered by the plaintiff as the suit will have to be reverted back to the stage of filing of the W.S. and recording of oral evidence.

9. Considering the comparative hardships and the irreparable loss that the petitioner would suffer if this petition is not allowed, I find that costs can be imposed and the petitioner can be given an opportunity to participate in the suit in which an agricultural land is the suit property. The law laid

down by the Honourable Apex Court in the matter of *Collector, Land Acquisition, Anantnag V/s Mst. Katiji*, AIR 1987 SC 1353, in my view, would be applicable to this case.

10. In view of the above, this petition is allowed. The impugned orders dated 07/09/2013 below Exhibits 39 and 41 are quashed and set aside only to the extent of this petitioner (Parasram Manik Pawar). Application Exhibits 39 and 41 stand allowed. "No W.S." and "No Cross" orders are set aside. The W.S. filed by this petitioner alongwith Exhibit 39 shall be taken on record by the Trial Court and an exhibit number shall be granted.

11. The costs deposited by the petitioner in this Court on 16/11/2013 can be withdrawn by the original plaintiff (Anil Vinayak Pawar) alongwith accrued interest from this Court within a period of 60 days, by tendering an application with his recent photograph and a copy of his Election Commission Voter's ID Card. If the said amount is not withdrawn within 60 days, the same shall be transmitted by the registry of this Court to the Government Medical College and Hospital, Aurangabad,

through Medical Officer, High Court Dispensary, Aurangabad.

12. The petitioner shall appear before the Trial Court on 03/12/2018 and shall proceed to cross examine the plaintiff/witness forthwith without seeking any adjournment. If there are more than one witness examined by the plaintiff, the petitioner shall be permitted to cross examine each of them and shall not seek an adjournment when the witness is present in the Court for cross examination.

13. Considering that this Court had stayed RCS No. 497/11 on 07/10/2013, the Trial Court shall decide the said suit as expeditiously as possible and preferably within a period of one year from today.

(RAVINDRA V. GHUGE, J.)

shp/-