

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

922 WRIT PETITION NO. 11835 OF 2017

VIJAY DINKAR @ BANDU PATIL
VERSUS
BAPURAO DHUDKU PATIL

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Mr. Vijay B. Patil, Advocate for Petitioner.
Mrs. Sabahat T. Kazi, Advocate for Respondent.

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CORAM : **V. K. JADHAV, J.**
DATE : 10th January, 2018.

ORDER:

. By way of this writ petition, the Petitioner / original Defendant has challenged the order passed by the Trial Court below Exhibits 50 and 71 in Special Civil Suit No.5 of 2014.

2 Brief facts giving rise to the present writ petition are as follows:

Initially, the Trial Court has passed "No W.S." order against the Petitioner / Defendant and by order dated 16th April, 2015, allowed the application Exhibit 36 filed by the Petitioner / Defendant and extended him an opportunity to contest the case on merit by accepting the written statement subject to costs of Rs.3,000/-. On 26th April, 2016, the Trial Court has passed the no-cross order as against the Petitioner

since the Petitioner and his counsel remained absent. Consequently, the Petitioner has filed an application Exhibit 50 on 16th June, 2016 for setting aside the said no-cross order. However, by impugned order dated 21st November, 2016 below Exhibit 50, the Trial Court has rejected the said application. The Petitioner has again filed an application Exhibit 71 for recalling the Plaintiff and his witnesses for cross-examination. However, the Trial Court by impugned order dated 10th July, 2017 below Exhibit 71, rejected the said application also. Hence, this writ petition.

3 The learned counsel for Petitioner submits that the Trial Court has unnecessarily given weightage to the dates prior to the acceptance of the written statement and rejected the application Exhibit 50 on the ground that the Petitioner was deliberately avoiding to cross-examine the Plaintiff and his witnesses. The learned counsel submits that after accepting the written statement by order dated 16th April, 2015, as per the *Roznama*, the dates are adjourned for framing of the issues and finally the application Exhibit 28 filed by the Respondent / Plaintiff came to be rejected on 29th February, 2016. Thereafter, on 26th April, 2016, the suit was posted for cross-examination of the Plaintiff and his witnesses and accordingly, on that

day, the Trial Court has passed the order of no-cross. The learned counsel submits that even though the Petitioner has filed an application Exhibit 50, the same came to be rejected by referring the earlier dates prior to the acceptance of the written statement.

4 The learned counsel for Respondent submits that though the special civil suit was instituted in the year 2014, for about one year, the Petitioner / Defendant has not filed his written statement and thereafter, on various dates, the Petitioner avoided to cross-examine the Plaintiff and his witnesses. Thus, finally on 26th April, 2016, the Trial Court has passed no-cross order against the Petitioner / Defendant. Though the Petitioner has filed the application Exhibit 50, the Trial Court has rejected the said application with reasons. So far as the application Exhibit 71 is concerned, the Petitioner has not filed the same for setting aside the no-cross order and simply filed the said application for recalling the witnesses. The Trial Court has therefore, rightly rejected the said application Exhibit 71. There is no substance in the writ petition and the same is liable to be dismissed.

5 On perusal of the record, particularly the certified copy of the *Roznama* placed before this Court today, it appears that by order dated 16th April, 2015 below Exhibit 36, the Trial Court has extended

an opportunity to the Petitioner / Defendant to contest the case on merit by filing the written statement subject to costs of Rs.3,000/-. It further appears that on 22nd June, 2015, the Petitioner / Defendant has deposited the costs and also filed the written statement Exhibit 46. It further appears from the certified copy of the *Roznama* that thereafter, on 28th July, 2015, 16th September, 2015, 16th October, 2015, 14th December, 2015 and 29th December, 2015, the matter was adjourned for framing of the issues. On 14th January, 2016, the Trial Court has framed the issues and the Respondent / Plaintiff has submitted the list of the witnesses alongwith the affidavit of evidence. It further appears that the Respondent / Plaintiff on 15th February, 2016 filed the application Exhibit 28. However, by order dated 29th February, 2016, the Trial Court has rejected the said application Exhibit 28. Accordingly, the matter was posted on 22nd March, 2016 and 26th April, 2016 for cross-examination of the Plaintiff and his witnesses. On 26th April, 2016, for the first time, when the matter was posted for cross-examination of the Plaintiff and his witnesses, the Trial Court has passed the no-cross order. On next date i.e. on 16th June, 2016, the Petitioner / Defendant has filed an application Exhibit 50 mentioning therein some reasons prevented him from cross-examining the Plaintiff and his witnesses and prayed for setting aside the no-cross order.

However, it appears from the order passed below Exhibit 50 that the Trial Court has observed that since 2014, the Defendant is prolonging the matter. In fact, as a matter of right, after acceptance of the written statement on 16th April, 2015 and most particularly on 29th February, 2016, the Petitioner / Defendant is entitled to cross-examine the Plaintiff and his witnesses. It is a part of record that after acceptance of the written statement, issues were framed finally on 14th January, 2016. Before that, there is no question of recalling the witnesses for cross-examination. It appears that the Trial Court has erroneously observed that the Defendant is guilty of prolonging the matter since 23rd June, 2014. It further appears from the order passed below Exhibit 50 that the Trial Court has unnecessarily taken the matter personally and observed in the impugned order passed below Exhibit 50 that the Defendant is avoiding to try present suit since joining of the Judge as the Presiding Officer in the said Court.

6 The Petitioner has thereafter, filed the application Exhibit 71 stating therein that he is a poor illiterate person, labour by occupation and on previous dates he could not cross-examine the witnesses in person because of his illiteracy. He has further pointed out to the Court that before that, the Advocates from Dhule Bar were

not ready to represent him in the matter because the Plaintiff is the practicing lawyer of the Dhule Bar. However, it appears from the order passed below Exhibit 71 that the Trial Court has again given reference to the events those are occurred prior to the acceptance of the written statement and rejected the application.

7 In view of the above discussion, in my considered opinion, the Petitioner / Defendant should be given one chance to cross-examine the Plaintiff and his witnesses and also to lead his oral evidence in support of his contentions. However, considering the inaction to some extent on the part of the Petitioner / Defendant, the cost is also required to be saddled on him. Hence, the following order:

ORDER

- I. The writ petition is hereby allowed.
- II. The impugned orders dated 21st November, 2016 and 10th July, 2017 passed below Exhibits 50 and 71 respectively in Special Civil Suit No.5 of 2014, are hereby quashed and set aside.
- III. The Petitioner / original Defendant is hereby permitted to cross-examine the Respondent /

original Plaintiff and his witnesses and also to lead his oral and documentary evidence in support of his contentions.

IV. The Petitioner shall pay costs of Rs.1,000/- (Rupees One Thousand Only) to the Respondent / original Plaintiff on his day of appearance before the Court below.

V. The parties shall appear before the Trial Court on 12th February, 2018.

VI. Considering the old pendency of the suit, the Trial Court is hereby directed to dispose of the suit as expeditiously as possible preferably within a period of six months from the date of appearance of the parties before the Trial Court.

VII. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]