

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13940 OF 2017

RAJABHAU TULJIRAM PAWAR
VERSUS
SAMBHAJI SHANKAR SANDSE AND OTHERS

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Advocate for Petitioner : Shri Doke Kishor R.
Advocate for Respondent 3 : Shri Madke D.A. h/f Shri Mahajan S.Y.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 19, 2018

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PER COURT :-

1. The petitioner / original plaintiff is aggrieved by the order dated 4.9.2017, passed by the trial Court at 5.35 p.m., thereby, directing the closing of evidence of this petitioner in the counter claim, in which, he is the defendant.
2. I have considered the submissions of the learned Advocates for the respective sides.
3. My attention is drawn to the grounds raised by the petitioner.
4. This very petitioner was before this Court in Writ Petition No.4324 of 2016, when no evidence order was passed by the trial Court on 15.2.2016 in the counter claim. I had allowed the said petition by order dated 11.7.2017 and I had permitted the plaintiff to lead evidence

in the counter claim as a defendant by imposing the following conditions in paragraph Nos.4 and 5, which read as under:-

"4. *Considering the submissions of the learned Advocates, I find that the petitioner had filed an application for recalling the 'No evidence order' within about 50 days. Contesting the counter claim is the only hope for the petitioner. His suit is already dismissed in default. He would lose an opportunity of leading evidence to protect his claim to the immovable suit house property. Keeping in view that the delay is not inordinate, the trial Court should have allowed application Exhibit 153 by imposing costs. This Court, by order dated 13.4.2016, has stayed the impugned order.*

5. *Considering the above, this petition is partly allowed. The impugned order dated 4.4.2016 is quashed and set aside and application Exhibit 153 is partly allowed on the following conditions:-*

(A) *The litigating sides shall appear in the proceedings before the trial Court on 5.8.2017. Formal notices need not be issued by the trial Court.*

(B) *The petitioner shall deposit costs of Rs.3,000/- (Rs. Three Thousand only/-) on 5.8.2017 and the sole counter claimant shall withdraw the said amount without conditions.*

(C) *The petitioner shall lead evidence on 5.8.2017 and shall not seek an adjournment. If he fails to do so, the trial Court shall order the closing of his evidence.*

(D) *The trial Court shall decide the counter claim as*

expeditiously as possible.

(E) If any of the above stated conditions are not complied with by the petitioner, he shall lose his right to lead the evidence."

5. Despite having put this petitioner to the condition that he shall lead evidence in the counter claim on 5.8.2017, he failed to lead evidence on 5.8.2017, 28.8.2017 and 4.9.2017. In fact, I had ordered that if he does not lead evidence on 5.8.2017, the trial Court would order the closing of his evidence in the counter claim.

6. In view of the above, I do not find that the trial court has committed any error in passing the impugned order on 4.9.2017 after recording that neither the plaintiff nor his Advocate were present in the Court till 5.30 p.m., nor was an application filed.

7. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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