

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3337/2016

Tukaram Shankar Ulape & Ors.

... Petitioners

V/s.

Akkatai Tukaram Yadav & Ors.

... Respondents

Mr. Chetan G. Patil for the Petitioners

Mr. P. D. Dalvi for Respondent No.1.

CORAM: K.K. TATED, J.

DATED : NOVEMBER 27, 2018

P.C. :

1 Heard. By this Writ Petition under Article 227 of the Constitution of India, the Petitioner seeks to challenge the order dated 19.12.2015 passed by the 4th Jt. Civil Judge, Junior Division Kolhapur below Exhibit- 77 in Regular Civil Suit No. 393/2011 rejecting the Defendant's Application for setting aside the order dated 15.12.2015 below Exhibit- 1.

2 During the course of arguments, the learned counsel for the Petitioner stated that though it is stated in their Application Exhibit- 77 that the order dated 15.12.2015 may be set aside, in fact, they made an Application for setting aside the order dated 08.12.2015 passed by the Trial Court by which the Defendant's evidence was closed. He further submits that the Trial Court has rejected the Application below Exhibit- 77 mainly on the ground that the matter was adjourned for judgment on 18.12.2015 and

therefore, there is no question of allowing the Petitioner's Application. He further submits that even if the matter is adjourned for judgment, a litigant can make an appropriate Application for interim and ad-interim relief to protect their interest. In support of his contention, he relies on the judgment of the apex court in the matter of ***Chandgi Vs. Mehar Chand and Ors. AIR 1998 Punjab & Haryana 197***. He also relied on the judgment of the apex court in the matter of ***Salem Advocate Bar Association Vs. Union of India 2005(6) SCC 344***.

3 On the basis of these submissions, the learned counsel for the Petitioner submits that the impugned order is liable to be set aside with liberty to the Petitioner to lead/examine his witness.

4 On the other hand, the learned counsel for the Respondent Plaintiff submits that the petition as it is filed by the Petitioner is not maintainable. He submits that in the present proceedings, the Trial Court had passed the order on 08.12.2015 closing the Petitioner – Defendant's evidence, which reads “*the Defendants have failed to adduce further evidence their Application Exhibit-73 is rejected. Hence, evidence of the Defendants side is closed.*”

5 The learned counsel for the Respondent submits that thereafter the matter was on board before the Trial Court on 15.12.2015 and at that time the suit was adjourned for arguments of the Defendant on 17.12.2015. He submits that the said order reads “*the suit is adjourned for argument of the Defendants on next date i.e. 17.12.2015.*”

6 The learned counsel for the Respondent submits that even on 17.12.2015 none appeared on behalf of the Petitioner / Defendant. Hence, Trial Court has passed order closing Defendant's arguments. Said order reads thus:

“arguments of the Defendants are concluded and the matter is fixed for judgment on 18.12.2015.”

7 He submits that the Petitioner has not challenged the order dated 08.12.2015 either before this court and/or before the appellate court. Therefore, there is no question of entertaining the Writ Petition.

8 Heard both sides. Admittedly, bare reading of the Application dated 19.12.2015 - Exhibit- 77 shows that the Petitioner has challenged the order dated 15.12.2015 passed by the Trial Court. By that order, the matter was adjourned for arguments of the Defendant on the next date. As the Petitioner has failed to challenge the order dated 08.12.2015 closing their evidence, there is no question of entertaining the Writ Petition filed by the Petitioner.

9 Hence, the Writ Petition stands rejected. No order as to costs.

(K. K. TATED, J.)