

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.3587 OF 2018

Rajmani Benimadhav Malviya (decd) by his legal heirs
and representatives Dashrat R. Malviya and another ... Petitioners
Vs.
Ramdulari C. Mishra (decd) and others ... Respondents

Mr. Dharendra D. Singh for Petitioners.
Mr. E. K. Sasidharan for Respondents No.2(bb) to 2(bd) and 2(ca) to 2(f).

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 26, 2018

JUDGMENT :

Heard Mr. D. D. Singh, learned Counsel for the petitioners,
Mr. E. K. Sasidharan learned Counsel for respondents No.2(bb) to 2(bd)
and 2(ca) to 2(f) at length.

2. At the oral request of Mr. Singh, leave to delete rest of the respondents is granted as it is common ground between the parties that respondents No.2(bb) to 2(bd) and 2(ca) to 2(f) are the only contesting respondents. Leave to amend so as to challenge order dated 01.02.2018 passed by the learned trial Judge below exhibit-157 in R.A.E.&R. Suit No.990/5881 of 1977 is granted. Amendment shall be carried out forthwith. Rule. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.
3. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 01.02.2018 passed by the learned trial Judge below exhibit-157 in R.A.E.&R. Suit No.990/5881 of 1977. By that order, the learned trial Judge rejected the application filed by the petitioners / defendants for setting aside order

dated 30.01.2018 closing their evidence.

4. Mr. Singh submitted that by order dated 12.01.2018, the learned trial Judge allowed application exhibit-154 filed by the Constituted Attorney of the defendants No.1 and 2 for reissuing witness summons to the Block Development Officer, Badshahpur having address at Block Mungra Badshahpur, Tahsil Machilishaher, District – Jaunpur, State – Uttar Pradesh 222202 by speed post, R.P.A.D. and through the department of the Court of Small Causes on required P.F. and Bhatta charges at the costs of the defendants. He submitted that accordingly, witness summons was issued by the trial Court fixing date on 16.01.2018 for examining the said witness. He submitted that the witness summons was served on the witness on 15.01.2018 at Uttar Pradesh. It was, therefore, impossible for the said witness to remain present on 16.01.2018 for giving evidence. He submitted that on 30.01.2018, the learned trial Judge closed the evidence of the defendants and kept the matter on 31.01.2018 for final arguments. Defendants were not aware of this order and immediately on the next date i.e. 31.01.2018 filed application exhibit-157 for setting aside order dated 30.01.2018. By the impugned order, the learned trial Judge has rejected the application. Mr. Singh submitted that matter may be fixed for recording evidence of the said witness on 16.03.2018. He submits that he will ensure that witness summons is personally delivered to the said witness and will also ensure presence of the said witness on 16.03.2018. He further states that despite service if the said witness does not remain present on 16.03.2018, he will drop the said witness.
5. Mr. Sasidharan submitted that the learned trial Judge was justified in rejecting the application as this is a High Court expedited matter in pursuance of the circular dated 17.12.2017 issued by the High Court.

6. As noted earlier, it is not in dispute that by order dated 12.01.2018, the learned trial Judge ordered re-issuance of witness summons to the Block Development Officer, Badshahpur, Uttar Pradesh and made it returnable on 16.01.2018. In my opinion, the learned trial Judge should have given longer date having regard to the fact that the witness is from Uttar Pradesh. It also appears that witness summons was served on the witness only on 15.01.2018. It, therefore, cannot be expected of the witness to remain present for deposing on 16.01.2018. In view thereof, the impugned order is set aside and application - exhibit 157 is allowed in the following terms:

a. Office of the Small Causes Court will issue fresh witness summons to the Block Development Officer, Badshahpur having address at Block Mungra Badshahpur, Tahsil Machilishaher, District – Jaunpur, State – Uttar Pradesh 222202 by speed post, R.P.A.D. and through the department of the Court of Small Causes on required P.F. and Bhatta charges at the costs of the defendants and will handover sealed envelope to the defendants No.1 and 2, fixing date of 16.03.2018 for deposition;

b. Defendants No.1 and 2 will personally serve the sealed envelope on the said witness and ensure his presence on 16.03.2018 for deposition;

In the event of failure of defendants No.1 and 2 either in serving the said witness or ensuring his presence on 16.03.2018, the said witness shall stand dropped.

c. Rule is made absolute in the aforesaid terms with no order as to costs.

7. All parties to act on the authenticated copy of this order.

(R. G. KETKAR, J.)