

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 4846 OF 2017

Mr. Shyamsundar Sadashiv Gokhale
deceased through his Legal Heirs.

... Petitioners.

V/s.

Mr. Nanasaheb Alias Mahadev Ganpat Barate
deceased through his Legal Heirs.

... Respondents.

Mr. Satyajeet A. Rajeshirke for the Petitioners.

Mr. Rushikesh C. Barge for Respondents 1,2A to 2D, 3 & 4.

CORAM : Ravindra V. Ghuge, J.

DATE : 15 March, 2018.

P.C. :-

1. Rule. Rule made returnable forthwith. With the consent of the parties taken up for final disposal.

2. The deceased Petitioner, through the legal heirs, is aggrieved by the order dated 4 January 2017 by which the Trial Court has rejected application (Exhibit 139) filed in Regular Civil Suit No. 144 of 2003.

3. I have considered the strenuous submissions of the learned Advocates for the Original Plaintiff and the Defendants.

4. There is no dispute that on 10 October 2016, an application (Exhibit 128) was allowed by the Trial Court. Pursuant thereto, the Plaintiff's witness viz. Sudha Gokhale was to be examined on 28 November 2016. On the said date she had to undergo surgery in a hospital in Pune and is said to have been discharged on 2 December 2016. Since the fact of her surgery was not brought to the notice of the Trial Court, it passed an order on 28 November 2016 thereby rejecting the application for adjournment and closing the evidence on behalf of the Plaintiff. List of witnesses was not supplied by the Plaintiff. Consequentially, the Application (Exhibit 139) seeking further time to lead evidence, has been rejected by the impugned order.

5. It therefore appears that on 28 November 2016 when the Plaintiff sought an adjournment and suffered the order of refusal, the Plaintiff was actually operated upon. On account of this reason having not been conveyed to the Trial Court, it rejected the motion for adjournment. The learned Counsel for the Defendants is justified in submitting that the suit is of the year 2003 and the Defendants are suffering rigors of litigation on account of the delay being caused by the Plaintiff in leading evidence. The Defendants

are yet to open their evidence and it is already about 15 years of the pendency of the said Suit.

6. This Court, by its order dated 22 June 2017, has stayed the Suit while issuing notice. The said Suit has to be adjudicated upon expeditiously. In doing so, the endeavour of the Court ought to be that the litigating sides are permitted to put forth their best evidence. The learned Counsel for the Plaintiff submits that in any case, the recording of evidence on behalf of the Plaintiff would be concluded in 30 days, notwithstanding whether the Petitioner No.1c, who resides in United States of America, is able to appear before the Court for deposing or not.

7. Considering the above, I find that the ends of justice would be met by allowing the Plaintiff to lead evidence as it is informed that only two witnesses are going to be examined and no more. At the same time, the rigors of litigation and the hardships being suffered by the Defendants could be softened by imposing costs.

8. This Petition is therefore allowed. The order dated 4 January 2017 and 13 December 2016 are quashed and set aside. The Plaintiff shall now tender the affidavit in lieu of examination in chief on behalf of the first witness out of the remaining two who are to be

examined, on 13 April 2018. No extension of time would be asked for. Failure to tender the affidavit would leave the Trial Court at liberty to close the evidence of the Plaintiff and permit the Defendants to commence the recording of their evidence. In any case, once the affidavit is tendered by the Plaintiff as directed above on 13 April 2018, the recording of evidence of the Plaintiff shall be concluded on or before 5 May 2018. No extension of time would be granted.

9. The Plaintiff shall deposit an amount of Rs.14,000/- before the Trial Court on or before 13 April 2018 and these seven Defendants would withdraw the said amount without condition as costs in equal proportions. If the amount is not deposited as directed, the Trial Court would close the evidence of the Plaintiff.

10. The learned Counsel for the Defendant submits that they would commence recording of their own evidence in the first week of June 2018 after vacation. By consent of the parties, the Suit is expedited and the Trial Court would decide the said Suit as expeditiously as possible keeping in view that it was lodged in 2003.

11. Rule is made absolute in the above terms.

(Ravindra V. Ghuge, J.)