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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12291 OF 2017

M/s.Maharaja Wine Mart & Ors.	...Petitioners
V/s.	
Thane Municipal Corporation & Anr.	...Respondents

Ms.Minal Chandnani for the Petitioners.

Mr.R.S. Apte, Senior Counsel I/b Mr.Mandar Limaye for the
Respondent Nos.1 and 2.

CORAM : R.D. DHANUKA, J.
DATE : 4TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 17th August, 2017 passed by the learned District Judge – 7, Thane rejecting the Application (Exhibit – 1) in Civil Miscellaneous Application No.231 of 2017.

2. Learned District Judge in the earlier round of litigation has passed an order on 14th February, 2017 in Civil Miscellaneous Application No.13 of 2017 by allowing the said application filed by the petitioners and directed the learned Trial Judge to dispose of RCS No.972 of 2016 within six months from the date of communication of the said order.

3. The suit is admittedly at the cross-examination stage of the plaintiffs. The suit could not be disposed of within the time limit prescribed by an order dated 14th February, 2017. The petitioners (original plaintiffs) applied for extension of time which is rejected by the learned Trial Judge on the ground that the learned District Judge in the order dated 14th February, 2017 had granted six months time. In appeal, the learned District Judge has rejected the said application on the ground that the learned Trial Judge was granted discretion whether to grant an extension or not. Learned Trial Judge having exercised the said discretion, learned District Judge did not interfere with the said order. In my view, the impugned order passed by the learned District Judge as well as by the learned Trial Judge refusing to grant extension of time on the ground that the powers granted to the learned Trial Judge were discretionary is *ex-facie* perverse. The suit is already at the stage of cross-examination of the witness being examined by the plaintiffs.

4. In my view, the learned trial Judge ought to have proceeded with the matter instead of refusing to grant extension of time thereby virtually dismissed the suit.

5. This Court has already granted *ad-interim* relief considering the perversity of the impugned order passed by the learned trial Judge as well as the learned District Judge.

6. Learned Trial Judge is directed to dispose of the said suit expeditiously and not later than four months from the date of re-commencement of the cross-examination. None of the parties shall ask for any unnecessary adjournment before the learned trial Judge. The witness being examined by the plaintiffs shall remain present on the dates as may be fixed by the learned Trial Judge and shall not seek any unnecessary adjournment. The defendants through their advocate shall remain present for the purpose of cross-examination of the witness of the plaintiffs and shall not seek any unnecessary adjournment.

7. The impugned order dated 17th August, 2017 passed by the learned District Judge – 7 as well as the impugned order passed by the learned Trial Judge refusing to grant extension of time are set aside. The application for extension of time filed by the plaintiffs are allowed.

8. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

9. All the parties as well as the learned Trial Judge to act on the authenticated copy of this order.

Vasant
Anandrao
Idhol

Digitally signed by
Vasant Anandrao
Idhol
Date: 2018.09.06
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(R.D. DHANUKA, J.)