

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2342 OF 2018

Sunita Dnyaneshwar Deshmukh,
Age-41 years, Occu-Household,
R/o Deshmukhwadi, Tq.Chalisgaon,
Dist.Jalgaon

-- PETITIONER

VERSUS

Smt.Jijabai Sahebrao Deshmukh,
Age-73 years, Occu-Service,
R/o Deshmukhwadi, Tq. Chalisgaon,
Dist.Jalgaon,
Presently R/o Laxmi Nagar,
Near the home of Adv.S.V.Patil,
Behind the Bus Stand, Chalisgaon,
Tq.Chalisgaon, Dist.Jalgaon

-- RESPONDENT

Mr.R.B.Temak, Advocate for the petitioner.
Mr.P.B.Salunke, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/03/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. On 26/03/2018, while granting ad interim relief, this Court had passed a speaking order, which reads as under :-

"1. The petitioner is aggrieved by the orders dated 05/01/2018

and 23/01/2018, by which, the Trial Court has disallowed the petitioner/ plaintiff from leading evidence after the issues were re-cast.

2. It is pointed out that the issues were re-cast on 20/12/2017. The earlier issues were cast on 01/08/2016, after which the litigating sides had led evidence. Pursuant to the re-casting of the issues on 20/12/2017, the plaintiff desired to lead further evidence and the Trial Court, by order dated 05/01/2018, rejected application Exh.88, thereby refusing leave to the plaintiff to lead further evidence on the ground that an opportunity was granted on 02/01/2018 and the plaintiff had sought an adjournment. For similar reasons, application Exhibit 95 was rejected by order dated 23/01/2018.

3. Issue notice to the respondents, returnable on 03/05/2018. On the condition that the petitioner would deposit an amount of Rs.2,500/- before the Trial Court on/or before 20/04/2018, both the impugned orders shall stand stayed and the Trial Court would adjourn Special Civil Suit No.99/2015 beyond the returnable date in this matter. If the said amount is not deposited, the Trial Court would proceed to decide the suit from 21/04/2018.

4. Copy of the petition paper book for issuance of notice shall be supplied on/or before 06/04/2018, failing which, this petition shall stand dismissed without reference to the Court on 07/04/2018."

3. The amount, as directed, has been deposited before the Trial

Court.

4. Learned Advocate for the respondent/defendant has strenuously opposed this petition. Contention is that, after the issues were recast on 20/12/2017, the plaintiff failed to lead evidence on 22/12/2017. The matter was adjourned to 02/01/2018 and as the plaintiff's advocate was absent, the impugned order was passed, closing the plaintiff's evidence. On 05/01/2018, the defendant closed his evidence. On the same date, the Trial Court rejected application Exh.88 filed by the plaintiff praying for liberty to lead evidence.

5. Notwithstanding the strenuous submissions of Mr.Salunke, learned Advocate for the respondent, I find an element of undue haste in Spl.C.S.No.99/2015. The said suit was lodged on 13/10/2015. Both the parties had led evidence on the issues that were cast on 01/08/2016. The issues were recast on 20/12/2017 and the Trial Court directed the plaintiff to lead evidence on the recast issues within 48 hours. In my view, there was no necessity on the part of the Trial Court to have shown so much of urgency in this matter when cases which are more than 5 and 10 years old are pending before the Courts in District Jalgaon.

6. Considering the above and the fact that the amount of Rs.2,500/- has been deposited by the plaintiff before the Trial Court, this petition is allowed. The impugned order dated 05/01/2018 is quashed and set aside and application Exh.88 is allowed, on the following conditions :-

[a] The defendant shall receive the costs of Rs.2,500/- alongwith interest, which she can withdraw from the Trial Court, without conditions.

[b] The plaintiff shall file an affidavit in lieu of examination in chief on the recast issues, in the Court on 05/04/2019.

[c] The defendant would be at liberty to cross examine the plaintiff on a date, she finds it suitable.

[d] Both the litigating sides would be granted reasonable opportunity of leading evidence on the recast issues.

[e] Both the litigating sides would avoid seeking adjournments on unreasonable grounds and shall co-operate with the Trial Court for an expeditious hearing in the suit.

7. Rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)