

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7739 OF 2019

VIMALBAI BALASAHEB AMBHORE AND OTHERS
VERSUS
KAMALBAI GANPATRAO GAIKWAD

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Advocate for Petitioners : Shri Londhe S.S.
Advocate for Respondent : Shri Kale M.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 23, 2019
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PER COURT :-

1. On 9.7.2019, while issuing notice, I had passed the following order:-

“1. The petitioners are original defendants in RCS No.50/2011. They are aggrieved by the order of “closing evidence” passed by the Lower Court and the further order dated 03/11/2018 vide which the application filed by the petitioners Exh.75, seeking leave to lead evidence, has been rejected.

2. I have heard the learned Advocate for the petitioners and have gone through the petition paper book. I find from the impugned order and the facts recorded by the Trial Court that the conduct of the petitioners is gross. It is on account of their conduct that the Trial Court ordered the closing of their evidence.

3. *However, it cannot be ignored that an immovable property in the nature of a house is involved in the suit and these petitioners would be rendered defenceless if evidence on their behalf is not recorded in the pending suit.*

4. *Issue notice to the respondent, returnable on 20/08/2019. On the condition that the petitioners shall deposit a total amount of Rs.10,000/ in this Court on or before 25/07/2019, the Trial Court would adjourn RCS No.50/2011 until the returnable date in this matter. Copy of the receipt of deposit shall be produced before the Trial Court on or before 01/08/2019.*

5. *If the amount as directed is not deposited, this petition shall stand dismissed without reference to the Court on 26/07/2019. Copy of the petition paper book shall be supplied for issuance of notice on or before 16/07/2019, failing which, this petition shall stand dismissed without reference to the Court on 17/07/2019.”*

2. The learned Advocate appearing on behalf of the sole respondent submits that though this matter is posted in the await service category, he is appearing in this matter and the petition can be heard.

3. I have considered the submissions of the learned Advocates for the respective sides.

4. I find from the record that the suit property is a house property. If the opportunity to lead evidence is not granted to the petitioners / defendants they would suffer an irreparable harm. The learned Advocate for the respondent rightly submits that the petitioners have created this situation. It is on account of their laxity that the evidence closing order was passed. He prays that the petition be dismissed. In the alternative, he submits that costs may be imposed on the petitioner and a portion of such costs may be donated for the treatment of poor patients.

5. Considering the above and since laches or oblique motives are not attributed to the conduct of the petitioners, this petition is allowed. The impugned order dated 3.11.2018 is quashed and set aside and application Exhibit 75 is allowed on the condition that the respondent is at liberty to withdraw an amount of Rs.8,000/- from this Court. The remaining Rs.2,000/- shall be transferred by the Registry of this Court to the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad”**) for the treatment of poor patients.

6. Since the matter before the trial Court is posted on 3.9.2019 and in view of the earlier order of this Court dated 27.11.2018 in Writ Petition No.776 of 2017 between the parties, the petitioners shall commence the recording of their oral evidence on the said date and shall not seek adjournments in the matter. The trial Court would respect the deadline issued for completion of the trial vide the order dated 27.11.2018.

(RAVINDRA V. GHUGE, J.)

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