

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4685 OF 2019

M/s Navkar Builders Kasgaon

...Petitioner

Versus

Smt. Dhruvadabai Laxman Mahajan & Ors.

...Respondents

.....

Mr. B.R.Warmaa, Advocate for the Petitioner.

Mr. A.K.Tiwari, Advocate for the Respondent No. 1.

Mr. S.R.Yadav, A.G.P. for respondent Nos. 2 to 5.

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WITH

WRIT PETITION NO. 4718 OF 2019

Shivlal Parchand Sharma & Ors.

...Petitioners

Versus

Smt. Dhruvadabai Laxman Mahajan & Ors.

...Respondents

.....

Mr. B.R.Warmaa, Advocate for the Petitioner.

Mr. A.K.Tiwari, Advocate for the Respondent No. 1.

Mr. S.R.Yadav, A.G.P. for respondent Nos. 2 to 5.

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 18-07-2019.

PER COURT :

01. In both these petitions, defendant Nos. 1, 7, 9 and 12 are the petitioners. The contesting respondent is the plaintiff, who is respondent No. 1 in both the

matters.

02. R.C.S. No. 34/2003 is pending adjudication for the last 16 years before the Trial Court. The suit was filed on 1.2.2003. The issues were cast on 22.6.2006. Additional issues were framed on 17.2.2015. The plaintiff was examined through an affidavit in lieu of examination-in-chief, on 5.7.2017. On 18.8.2017, no cross Order was passed against defendant Nos. 1 and 7. On 23.8.2017 "No cross Order" was passed against defendant No. 9 and on 24.8.2017, "No cross Order" was passed against the defendant No. 12.

03. These defendants preferred an application Exh. 191 and 202 for seeking recalling of "No cross Order". By the impugned Orders dated 5.10.2017 and 25.1.2018, application Exhibits 191 and 202 were rejected by the Trial Court.

04. I have heard the learned Advocate for the respective sides for quite sometime. The petitioner lady has preferred a suit for mandatory injunction and has prayed for the shops erected by the defendants, in front of the suit road, may be removed and the said road be cleared of all obstacles. It is also prayed that if the shops are not removed, they be demolished.

05. I find that these defendants, though have been negligent and have neglected the proceedings, have approached the Trial Court for setting aside the "No Cross Order" within two to three months. If they are not permitted to cross-examine the plaintiff it would cause an irreparable damage to their case. By imposing costs, the plaintiff could be compensated and ends of justice could be made.

06. In view of the above, these petitions are allowed. The impugned Orders dated 5.10.2017 and 25.1.2018 are quashed and set aside. Application Exh. Nos. 191 and 202 are partly allowed with the following directions :

(a) Each of these petitioner-defendants shall deposit an amount of Rs. 4,000/- before the Trial Court on or before 3.8.2019. There shall be no request for extension of time.

(b) After the amount is deposited, the plaintiff can withdraw the entire amount without conditions.

(c) The plaintiff would remain present before the Trial Court on 9.8.2019 at 11 A.M. and all these defendants would cause the cross-

examination of the plaintiff and would conclude their cross-examination on the same date.

(d) The Trial Court shall decide R.C.S. No. 34/2003 as expeditiously as possible and in any case, on or before 31.3.2020. It would be at liberty to refuse adjournments to the litigating sides if such requests are based on unreasonable grounds.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-