

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. : 8052 OF 2019

Anwar Jamakha s/o Mohamad Akhtar
Jamakha, Age : 50 years, Occu. Agril.,
At post – Marshivni, R/o Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

... PETITIONER
(Orig. Defendant No.4)

VERSUS

Sow. Salehabegum w/o Sayed
Noorsaheb, Age : 60 years, Occu.
Household, R/o : At Garud Chowk,
Near Mahadeo Temple Latur,
Dist. Latur.

... RESPONDENT
(Orig. Plaintiff)

...

Advocate for the Petitioner : Shri S. K. Savangikar
Advocate for the Respondent : Shri R. P. Adgaonkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 30th JULY, 2019.

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ORAL JUDGMENT :

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

2. The petitioner is original defendant No. 4 in Regular Civil Suit No. 204/2008. He led his examination in chief by filing an affidavit in lieu of examination in chief on

05/11/2016. Thereafter, the matter got adjourned on a number of occasions. Eventually, on 20/02/2019, the Trial Court rejected application Exhibit 182, by which, the petitioner had sought one more adjournment. On the same date, the evidence of the petitioner was struck off. The petitioner, therefore, preferred an application Exhibit 183 praying for recalling of the earlier orders and permitting him to be subjected to cross-examination. By the impugned order dated 20/04/2019, the Trial Court has rejected the application.

3. The learned Advocate for the petitioner submits that there were about 19 adjournments that were sought in between 05/11/2016 to 20/02/2019. On a few occasions, the plaintiff had sought an adjournment and on some occasions, the petitioner had sought adjournments. Both appear to be equally placed when it comes to the number of adjournments sought by the parties.

4. He, however, frankly submits that the petitioner should have been diligent and having stepped into the witness box, he should have avoided seeking adjournment. He, however, submits that considering an immovable property involved in

the suit, the evidence of the petitioner is precious for him and if the impugned orders are sustained, he would lose a vital right in the immovable property.

5. The learned Advocate for the original plaintiff submits that this petition deserves to be dismissed with heavy costs. The law does not assist a sleeping litigant. The adjournments sought by the plaintiff are unjustified. There can be no excuses for the petitioner to remain absent having stepped into the witness box.

6. In the alternative, he submits that if this Court is inclined to entertain this petition, heavy costs of Rs. 50,000/- may be imposed upon the petitioner.

7. Having considered the rival contentions of the parties and having perused the record, it is quite evident that defendant No. 4 has sought adjournments on several occasions. In the situation in which the petitioner is already in the witness box, the adjournments sought by the petitioner are unjustified. It is in this backdrop, that the Trial Court has rejected Exhibit 183.

8. I find that in such peculiar facts, it cannot be over looked that an immovable property is involved in the litigation and the petitioner would suffer an irreparable damage if this petition is to be rejected. If costs are imposed on the petitioner to be paid to the plaintiff, the rigours of litigation being suffered by the plaintiff may be softened.

9. In the light of the above, this petition is allowed. The impugned order dated 20/04/2019 is quashed and set aside. Application Exhibit 183 is allowed. Consequentially, the order dated 20/02/2019 striking off the evidence of the petitioner is also set aside.

10. The petitioner shall deposit an amount of Rs. 5,000/- (Rs. Five Thousand only) before the Trial Court on or before 09/08/2019, failing which, this order shall stand recalled and the impugned order shall stand restored by dismissing this petition. No extension of time shall be sought. After the amount is deposited, the plaintiff would withdraw the said amount without conditions.

11. Subject to the compliance of the above, the petitioner shall be present on 09/08/2019 for cross-examination and the plaintiff shall conduct the cross-examination on the same date. If other defendants desire to cross-examine the petitioner, they are at liberty to do so. However, it be noted that the petitioner, who has stepped into the witness box, shall now refrain from seeking even a single adjournment until his cross-examination is concluded. One instance of adjournment and the Trial Court shall strike off the witness of the petitioner and he shall thereafter not be entitled to raise any grievance.

12. Rule is made absolute in the above terms.

13. The litigating sides are permitted to act upon the print out copy of this order obtained from the official website of the Bombay, High Court Bench at Aurangabad.

(RAVINDRA V. GHUGE, J.)

shp/-