

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8187 OF 2019

Atul s/o Kashinath Patil

Petitioner

Versus

Smt. Shakuntalabai w/o Sopan Wagh

Respondent

Mr. A.K. Tiwari, Advocate for the petitioner.
Mr. K.C. Sant, Advocate for the respondent.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 10/07/2019

PER COURT :

1 The learned advocate for the petitioner submits that since Respondent No.2 is the original defendant, he is not concerned with the present cause of action and can be deleted.

2 Leave to delete is granted.

3 The petitioner is original defendant no.1 in SCS No.80/2017. He is aggrieved by the "No Cross" order dated 07.02.2019 and is also aggrieved by the impugned order dated

17.04.2019, by which the trial Court has rejected his application Exhibit-42.

4 I have considered the submissions of the learned advocates for the respective sides and have gone through the petition-paper book with their assistance.

5 The suit property is an agricultural land. The petitioner is defendant no.1 and the sole respondent (after deletion) is the original plaintiff. The plaintiff filed an affidavit in lieu of Examination-in-Chief on 25.09.2018. As he was not cross examined by the petitioner, the matter was adjourned to 23.10.2018. Then the matter was adjourned to 27.11.2018. On that date, an adjournment was granted by the Court by imposing cost of Rs.500/-. On 02.01.2019, again an adjournment was sought, though costs were not deposited. On 10.01.2019, costs were again not deposited and yet adjournment was sought. On 07.02.2019, the trial Court ordered "No Cross". On 11.03.2019, the petitioner did not take any steps. On 05.04.2019, the petitioner filed an application Exhibit-42 seeking leave to cross examine the plaintiff, which has been rejected by the impugned order dated 17.02.2019.

6 The learned advocate for the Respondent-plaintiff has strenuously opposed this petition contending that the petitioner has been negligent and careless. Probably, being a defendant, his intention is to delay and protract the proceedings. It is obvious from the dates of hearing that the petitioner was granted almost seven chances to cross examine the plaintiff over a period of six months. In these circumstances, the petition deserves to be dismissed with costs. In the alternative, he submits that if this Court is inclined to cause indulgence in the matter, costs of Rs.50,000/- be imposed.

7 The learned advocate for the petitioner submits that the petitioner is a poor, illiterate agriculturist. He, therefore, submits that lesser costs may be imposed.

8 I do find from the record that the conduct of the petitioner is quite gross. The impugned order cannot be faulted as the trial Court was left with no option but to refuse any further leave to the petitioner to cross examine the plaintiff. However, I find that the suit is too old having been lodged in 2017 and if the petitioner loses an opportunity to cross examine the plaintiff, he would practically be rendered defenceless.

9 In these circumstances, this petition is partly allowed. The “No Cross” order dated 07.12.2019 and impugned order dated 17.04.2019 are quashed and set aside and the application Exhibit-42 is allowed on the following conditions:

(a) The petitioner-defendant no.1 shall deposit an amount of Rs.15,000/- (Rs.Fifteen thousand) on or before 3rd August, 2019 before the trial Court.

(b) The learned Counsel for the plaintiff submits, on instructions from the plaintiff who is present in the Court, that he would appear before the trial Court on 03.08.2019.

(c) The petitioner shall cross examine the plaintiff on 03.09.2019 subject to depositing the money and shall conclude the cross examination during the course of the day without seeking adjournment.

(d) The plaintiff would be at liberty to withdraw the amount of costs without any condition.

(e) It is made clear that the petitioner-defendant no.1 shall not seek an adjournment to cross examine the plaintiff and in the event, the witnesses of the plaintiff are subsequently examined, he would be equally diligent in cross examining those witnesses also.

(RAVINDRA V. GHUGE, J.)

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