

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10151 OF 2019

RAZIYODDIN MOHAMMED NAZIRODDIN
VERSUS
MOHAMMED HAMIDUDDIN BASHEERUDDIN LRS

...
Advocate for Petitioner : Smt. Ansari A.N.
Advocate for Respondents 3/1 to 3/3 : Shri Natu Sharad V.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: October 04, 2019

...

PER COURT :-

1. The learned Advocate for the petitioner makes a solemn statement, on instructions, that respondents 1-1 to 1-5 have been served through Hamdast on 7.9.2019. The report of service is available with the concerned District Court at Nanded and the petitioner has personally verified from the records that the service report indicates such service. The only difficulty is that the service report is in transit and has still not reached this Court.

2. The learned Advocate for the petitioner submits on instructions from the petitioner that this statement may be recorded.

3. I have heard the learned Advocate for the petitioner

and on behalf of respondent Nos.3-1 to 3-3. Respondent Nos.2(1) to 2(4) are served by Court notice. No appearance is entered. Original respondents 1 and 2, both are now deceased. Their L.Rs. are the contesting respondents in this matter.

4. On 16.8.2019, I had passed a detailed order, which reads as under:-

"1. The petitioner is one of the LR's of deceased defendant No.5/1 in RCS No.1007/1989. Grievance is that the petitioner is residing at Hyderabad and the paper proclamation was published for serving defendant Nos. 5/1-1 to 5 in a newspaper at Nanded. After gathering knowledge of the pending suit, the petitioner approached the Trial Court with application Exh.411 on 25/07/2019 praying for setting aside the ex-parte order against defendant Nos.5/1-3, passed on 14/01/2019.

2. It is conceded that defendant Nos.5/1-2, 2, 4 and 5 have not filed Exh.411. It is now stated across the bar that defendant No.5/1-3, the petitioner herein, would be representing all these 5 defendants and a common written statement is prepared and if required, common evidence would be led.

3. *The Trial Court has passed the impugned order dated 26/07/2019 rejecting Exh.411 on the ground that this petitioner has been sleeping over the matter and has approached belatedly. It is also recorded that the High Court had granted time upto 12/07/2019 and the time has expired and the suit has to be decided expeditiously. A statement is made that an application is moved before this Court for extension of time and final arguments in the matter have still not been recorded.*

4. *Though I find that the petitioner has been negligent, it is pointed out that the suit was dismissed in 1995 and after legal proceedings having been taken up, the suit was restored by the judgment dated 11/12/2009 delivered by the First Appellate Court and thereafter the suit was taken on the board on 04/01/2010. 15 years have been lost in this process. It also cannot be ignored that the suit property is an immovable property being an Inam land.*

5. *Considering the above, issue notice only to the LR's of the original plaintiff, i.e. respondent Nos.1/1 to 1/5 and 2/1 to 2/4, returnable on 20/09/2019. Humdast is granted on request. It is made clear that if this matter appears under the caption of "incomplete service", the ad-interim protection being granted today shall stand vacated forthwith.*

6. On the condition that the petitioners would deposit an amount of Rs.25,000/- (Rs.Twenty Five Thousand only) before the Trial Court on 03/09/2019, the Trial Court would adjourn the matter till the returnable date in this petition. If the amount is not deposited on 03/09/2019, the Trial Court would proceed to decide the suit on its own merits, without the participation of defendant Nos. 5/1-1 to 5. No extension of time should be granted.

7. It be noted that in the event, this petition is allowed, the amount of costs would be withdrawn by the plaintiffs in equal proportions."

5. The petitioner has deposited an amount of Rs.25,000/- before the trial Court.

6. In view of the above and for the reasons assigned in the order dated 16.8.2019, this petition is allowed in terms of prayer clause (B) which reads as under:-

"(B). By allowing the application filed at Exhibit No.411 in Regular Civil Suit No.1007/20189, the ex-parte order dated 14.1.2019 and the order dated 26.7.2019 passed on exhibit No.411 may kindly be quashed and set aside, by allowing the petitioner to file written statement and participate in the suit proceedings. "

7. Since respondents 3/1 to 3/3 have appeared in the matter, they would be at liberty to withdraw an amount of Rs.5,000/- each from the trial Court without conditions. The rest of the amount of Rs.10,000/- shall be donated to the District Legal Aid Committee, Nanded.

8. By the consent of the parties and since the written statement of the petitioner shall be filed on/or before 16.10.2019, the trial Court shall give highest priority to RCS No.1007 of 1989, by listing the matter, on day to day basis, and the said proceedings shall be finally disposed off on/or before 30.4.2020.

(RAVINDRA V. GHUGE, J.)

...

akl/d