

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

WRIT PETITION NO.11326 OF 2019

NILESH BHIMRAJ TRIBHUVAN

VERSUS

**SHILPA MAGASWARGIYA SAHAKARI GRUH NIRMAN
SANSTHA MARYADIT THROUGH SECRETARY**

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Advocate for the Petitioner : Shri A. S. Kulkarni
Advocate for the Respondent - sole : Shri P. D. Suryawanshi

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 18th SEPTEMBER, 2019.

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PER COURT :

1. This matter was heard extensively on 16/09/2019 and again today.

2. I have perused the record and the petition paper book with the assistance of the learned Advocates. 'Confusion most confounded' is the often used phrase and this is a peculiar case in which confusion is created by this petitioner / original opponent No. 3, on account of legal advise and a blunder committed by the Cooperative Court in dismissing application Exhibit 111 by order dated 27/11/2015 in default, by which, the petitioner sought issuance of summons to two witnesses.

3. Dispute CCA No. 287/2004 has been filed by the respondent herein. By an application Exhibit 111 filed on 20/08/2015, the petitioner sought permission to examine two witnesses named in the said application. The original disputant opposed the said application by contending that one of the witness Shri Govind is bed ridden due to age related issues for the last six months. By order dated 27/11/2015, the Cooperative Court dismissed Exhibit 111 in default as the learned Advocate was not present. I find this to be a strange and pedantic approach on the part of the Cooperative Court. Notwithstanding the absence of the Advocate, it could have taken up the application for a decision as to whether the summons should be issued or not.

4. The Co-operative Court has then passed an order on 18/01/2016 declaring that this petitioner is not interested in this matter and 'no oral evidence order' was passed. This order was invited by the petitioner since he was remaining absent and simultaneously was prosecuting Revision Application No. 5/2017 for challenging the DID order dated 27/11/2015. By

judgment dated 17/02/2017 the Cooperative Appellate Court allowed the revision of the petitioner and by imposing costs of Rs. 1,000/-, directed the Cooperative Court to decide Exhibit 111 on its merits. By an order dated 12/04/2017, the Cooperative Court rejected Exhibit 111 on the ground that no evidence order has already been passed and subsequently the same Trial Court passed the order on 26/09/2018 vacating the 'no evidence order' by allowing Exhibit 123 with costs of Rs. 500/-.

5. On 12/10/2018, the Cooperative Court passed an order on Exhibit 128 issuing summons to the witnesses who were mentioned in Exhibit 111, though Exhibit 111 was already rejected. On 10/12/2018, the Cooperative Court passed an order on Exhibit 1 permitting the petitioner to cross-examine Shri Govindrao Metkar and *suo-motu* set aside its earlier order dated 12/10/2018 passed on Exhibit 128 issuing summons to witness Shri B. N. Kindalkar. The summons to Shri Kindalkar was, therefore, recalled. By order dated 17/01/2019, the Cooperative Court passed an order below Exhibit 1 and again *suo-motu* recalled its earlier order dated 10/12/2018 and re-

allowed the petitioner to examine the witnesses mentioned in Exhibit 111.

6. In the above backdrop, the original disputant filed Revision No. 36/2019 before the Appellate Cooperative Court and the said Court delivered the impugned judgment dated 27/06/2019 allowing the revision, setting aside the orders dated 10/12/2018 and 17/01/2019 and directed the Cooperative Court to decide the dispute within six months.

7. In the peculiar facts and circumstances of this case, I find that the learned Cooperative Court has confused itself in not keeping a track of its own orders and interfering with its own orders, at will, without even considering the effects of passing such orders.

8. The learned Advocate for the original disputant has strenuously defended the impugned judgment of the revisional Court. He submits that it is apparent that on the one hand, the petitioner was negligent and careless in conducting the proceedings and on the other hand, the learned Cooperative

Court passed the DID order on 27/11/2015 to the extent of the application Exhibit 111 and subsequently passed an order on 12/04/2017 closing the evidence of the petitioner. Pursuant thereto, the Cooperative Court could not have passed the order dated 12/10/2018 on Exhibit 121 which was then set aside by order dated 10/12/2018 and the later order was then set aside by an order dated 17/01/2019.

9. I can evidently note that on account of the above aspect, both the original disputants, as well as the petitioner and the other original opponents have been engaged in litigation on this issue for the last 4 years. The dispute dates back to 2004 and is 15 years old.

10. In my view, the Cooperative Court should have disposed off Revision No. 36/2019 by giving a time bound frame to the petitioner / opponent No.3 to have the witnesses examined. Instead of doing so, the Appellate Cooperative Court allowed the revision and has virtually closed the doors for leading the evidence on the petitioner.

11. As such, this petition is partly allowed. The impugned orders dated 27/11/2015 on Exhibit 111, order dated 18/01/2016 closing the evidence of opponent No.3 and the order dated 12/04/2017, stand quashed and set aside. The petitioner shall deposit costs of Rs. 20,000/- before the Cooperative Court on or before 27/09/2019 and shall not seek an extension of time. Failure to deposit the amount would result in the restoration of the order dated 18/01/2016 and the oral evidence of the petitioner shall stand closed. If the amount is deposited the original disputant shall withdraw the entire amount without conditions.

12. Application Exhibit 111 therefore, stands allowed and shall stand restored to the file of the Trial Court in CCA no. 287/2004. All the litigating sides would canvass their submissions on the said application on or before 05/10/2019 and the Cooperative Court shall pass an order on 18/10/2019 on its own merits.

13. Needless to state, if the Trial Court allows Exhibit 111, the petitioner original opponent No. 3 shall ensure that the

said two witnesses are examined on or before 15/12/2019 and no extension of time for any reason whatsoever shall be granted. If the Cooperative Court finds that the petitioner is indulging in delaying tactics, it shall be at liberty to refuse adjournments to the petitioner and would also be at liberty to impose costs if it finds that the adjournments are sought on unreasonable and trivial grounds.

(RAVINDRA V. GHUGE, J.)

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