

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5552 OF 2019
AND
WRIT PETITION NO. 851 OF 2015

ARVIND PUNDLIK DHAMNE
VERSUS
SHAIKH BUDAN SHAIKH CHANDU, THROUGH L RS

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Advocate for Applicant : Shri Patil Milind
Advocate for Respondents 1 & 2 : Shri Kasliwal A.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 02, 2019

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PER COURT :-

1. I have heard the learned Advocates for the respective sides.
2. Considering the consensus between the parties, the civil application is allowed. The delay is condoned and the Writ Petition is restored at the stage at which it was dismissed in default.
3. The issue raised in the Writ Petition is that the original plaintiff did not lead evidence on the two issues that were recast and reserved a right to lead evidence in rebuttal. The petitioner/defendant, upon noticing such purshis of the plaintiff, submitted a purshis that he does not desire to step into the witness

box with regard to the said issues. Thereafter, the plaintiff realized that there would be no chance for leading evidence in rebuttal. By the impugned order, the trial Court has allowed the plaintiff to lead evidence in rebuttal, when in fact, no evidence was led by the defendant on the said two issues.

4. The suit was stayed by the first order of this Court dated 3.2.2015. However, as the petition was dismissed in default, the stay stood vacated and the plaintiff adduced evidence on the recast issues.

5. Apparently, in the eyes of law, the impugned order dated 9.10.2014 below Exhibit 95 is unsustainable.

6. In view of the above, the plaintiff agrees that his oral evidence recorded recently be treated as the evidence of the plaintiff. Learned Advocate for the petitioner / defendant submits that he would cross examine the plaintiff and then decide whether the defendant desires to adduce evidence.

7. In view of the above, this petition is partly allowed. The impugned order dated 9.10.2014 is quashed and set aside. The evidence of the plaintiff, recorded in the above stated fortuitous circumstances, shall be treated as plain evidence of the plaintiff and

the defendant is therefore, at liberty to cross-examine the plaintiff and then lead evidence, if so advised.

8. A formal application for setting aside the 'No-Cross' Order dated 2.1.2019 shall be filed. The plaintiff shall not oppose and the trial Court shall forthwith pass a formal order vacating the 'No Cross' order. Since the suit is of the year 2002, the trial Court shall endeavour to dispose of the suit on/or before 29.2.2020. Parties to cooperate.

9. Needless to state, the parties are at liberty to lead the evidence as in regular course.

(RAVINDRA V. GHUGE, J.)

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