

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

WRIT PETITION NO. 734 OF 2019

**BAPURAO DHUDAKU PATIL
VERSUS
VIJAY DINKAR @ BANDU PATIL**

...
Advocate for the Petitioner : Ms. S. T. Kazi
Advocate for the Respondent - sole : Shri V. B. Patil
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 23rd AUGUST, 2019.

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PER COURT :

1. When Writ Petition No. 11835/2017 came up before this Court today in the first session, as the Trial Court has made a second request for extension of time, it was noticed that the original plaintiff in Special Civil Suit No. 5/2014 had filed Writ Petition No. 734/2019 wherein an exparte ad interim stay to the proceedings was granted by this Court (Coram : Sunil P. Deshmukh - J.). Consequentially, since 21/01/2019 the said Special Civil Suit has virtually come to a standstill. Since I noticed that the earlier order dated 10/01/2018 in the earlier petition may not have been pointed out to this Court and since the second petition pertains to the assignment of this Court,

the papers were called for after the lunch recess.

2. The learned Advocates for the respective sides have strenuously canvassed their submissions. The plaintiff is aggrieved by the order dated 10/12/2018 passed by the Trial Court, by which, application Exhibit 93 has been rejected.

3. The pending suit is with regard to the plaintiff having charged the respondent/defendant with defamation. An amount of Rs. 10 Lakhs is claimed for having defamed the plaintiff and for having lowered his respect in the eyes of the public. In Writ Petition No. 11835/2017, the original defendant had approached this Court since a 'No W.S.' order was passed. This Court (Coram : V. K. Jadhav - J.) has delivered a speaking order and the operative part of the directions read as under :-

"I. The writ petition is hereby allowed.

II. The impugned orders dated 21st November, 2016 and 10th July, 2017 passed below Exhibits 50 and 71 respectively in Special Civil Suit No.5 of 2014, are hereby quashed and set aside.

III. The Petitioner / original Defendant is hereby permitted to cross-examine the Respondent / original Plaintiff and his witnesses and also to lead His oral and documentary evidence in support of his contentions.

IV. The Petitioner shall pay costs of Rs.1,000/- (Rupees One Thousand Only) to the Respondent/ original Plaintiff on his day of appearance before the Court below.

V. The parties shall appear before the Trial Court on 12th February, 2018.

VI. Considering the old pendency of the suit, the Trial Court is hereby directed to dispose of the suit as expeditiously as possible preferably within a period of six months from the date of appearance of the parties before the Trial Court.

VII. The writ petition is accordingly disposed of."

4. The contention of the plaintiff in the 2019 petition is that he was permitted to lead further evidence. I do not find that this Court had granted leave to the plaintiff to lead further evidence. In fact, the plaintiff who did not tender a list of witnesses, had examined his witnesses and submitted the

evidence closing purshis Exhibit 26 on 11/08/2014. Thereafter, he had again re-opened his evidence and had submitted a second evidence closing purshis Exhibit 58 on 21/11/2016. This Court had passed the order dated 10/01/2018 in the 2017 suit keeping in mind that the defendant wanted to cross-examine the plaintiff as he had not carried out such cross-examination earlier. This was permitted by the said order which did not mean that the plaintiff would again add more witnesses and seek leave to examine.

5. Notwithstanding the above, the plaintiff had filed Exhibit 93 seeking leave to examine the Librarian of the Dhule District Bar Association. It was contended that the plaintiff was an office bearer of the Bar Association in between 2010 to 2016. Social gatherings and other social functions were arranged by him. However, Exhibit 93 does not indicate as to why the proposed witness Sanjay Chotulal Thakur needs to be examined. No nexus is indicated between Shri Thakur and the cause of action. The Trial Court apprehended that such a witness was being created as, neither had the plaintiff tendered a list of witnesses, nor had he referred to Shri Thakur as being

his witness in the plaint.

6. It is settled law that the number of witnesses is not important. What is important is that the witnesses must be connected with the cause of action and their testimony must be supported by the pleadings of the parties.

7. Considering the above, I do not find that the impugned order dated 10/12/2018 could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

8. Since time has been extended by order dated 23/08/2019 passed in Writ Petition No. 11835/2017, the parties are expected to cooperate with the Trial Court for the expeditious disposal of the pending suit.

(RAVINDRA V. GHUGE, J.)

shp/-