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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.714 OF 2014

Gurudatt Sugars Ltd. ..Petitioner.

V/s.

Datta Shetkari Sahakari Sakhar Karkhana Ltd. & Ors. ..Respondents.

Mr.Shriram S.Kulkarni with R.S.Kulkarni for the petitioner.

Mr.S.S.Kanetkar for respondent No.1.

CORAM : M.S.SONAK, J.

DATE : MARCH 22, 2019

ORAL JUDGMENT

Heard Mr.Kulkarni, learned counsel for the petitioner and Mr.Kanetkar, learned counsel for respondent No.1.

2. Mr.Kulkarni, learned counsel for the petitioner points out that by order dated February 3, 2018, notice was issued for final disposal.

3. Challenge is to the order dated November 29, 2012 by which learned trial Judge declined to grant any further time to examine the petitioner's first witness by referring to the strict time schedule set out by this Court in its order dated October 8, 2012 in Writ Petition No.9326 of 2012.

4. Perusal of the order dated October 8, 2012 makes it clear

that this very petitioner had instituted Writ Petition No.9326 of 2012, because, there was lack of diligence on the part of the petitioners in proceeding with the evidence. However, this Court indulged the petition by setting aside the strict time schedule within which the affidavit in lieu of examination-in-chief had to be filed by the first witness and thereafter proceed with the evidence of the matter.

5. Despite the time schedule set out by this Court, the petitioner failed to comply with the same. Learned trial Judge has reasoned that since the time schedule was set by this Court, it would not be proper for it to extend the time limit.

6. Though, there is no infirmity in the view taken by learned trial Judge, taking into consideration the submissions made by Mr.Kulkarni that there was some issue as concerning the advocate's health, once more, indulgence is granted to the petitioner. However, this time the petitioner will have to pay substantial costs in order to avail such indulgence. For the reasons attributable to the petitioner, the suit has been delayed by almost five years. Even earlier, there was no diligence shown by the petitioner.

7. Therefore, the impugned order is set aside, subject to the petitioner paying costs of Rs.1 lakh to the defendant within a period of four weeks from today. The amount of costs to be deposited by the petitioner before the trial Court within four weeks from today and

thereafter, the defendants to the suit are granted liberty to withdraw the same on pro rata basis.

8. If the amount of costs as aforesaid are deposited within four weeks from today, then, the impugned order as to stand set aside and learned trial Judge will grant further opportunity to the petitioner to examine / cross examination of the first witness to conclude within a period of two months. If at all any other witness is remain to be examined, even evidence of such witness, including cross-examination to be completed within a period of six months from today.

9. Rule is made absolute in the aforesaid terms.

10. There shall be no orders as to costs.

11. It is made clear that if the petitioner does not proceed with the suit diligently, learned Judge to make appropriate orders without showing any further indulgence to the petitioner.

12. It is made clear that the amount of costs will have to be paid within four weeks from today without seeking any further extension. If the amount of costs is not paid, then this petition shall be deemed to have been dismissed with costs of Rs.1 lakhs.

12. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)