

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.196 OF 2019

Sharad Vasant Kulkarni

...Applicant

vs.

Raghunath Ganapati Patil and Ors.

...Respondents

Mr. S.S. Shah, for the Applicant

None for the Respondents

CORAM : M. S. SONAK, J.

DATE : APRIL 16, 2019

P.C.:

- . Heard the learned counsel for the Applicant.
2. The challenge in this Civil Revision Application is to the order dated 17th August, 2018. Operative portion of which reads thus:

1. *Appeal is hereby allowed.*
2. *The order of the Civil Judge Junior Division, Shahuwadi, Malkapur, in Civil Misc. Application No. 41 of 2015 dated 6.12.2017 is hereby quashed and set aside.*
3. *Civil Misc. Application Exh. 41 of 2015 is hereby allowed.*
4. *The original suit bearing Regular Civil Suit No. 16 of 2005 be restored to its original stage i.e. cross examination of the Plaintiff as already affidavit in lieu of examination in chief filed.*
5. *Needless to say that the earlier order passed by the Appellate Court, as expediting the matter and dispose of the matter at the earliest, is there and therefore, the learned trial Court has to follow the same.*
6. *Parties to bear their own costs.*
7. *Bill of costs be prepared accordingly.*
8. *Copy of the judgment be sent to learned trial Court along with the writ.*

3. Mr. Surel Shah, learned counsel for the Applicant submits that the learned trial Court in the present case had given detailed reasons for dismissing the suit since the Plaintiff in the suit was avoiding to face the cross examination. He submits that under the provision of Order 17 of Code of Civil Procedure, the learned trial Judge was justified in dismissing the suit looking to the reluctance of the Plaintiff to proceed with the suit. He submits that the reasoned order of the learned trial Judge did not warrant any interference. Yet the Appeal Court by the impugned order has set aside the order made by the learned trial Judge. He submits that this is a case where the Appeal Court has exceeded the jurisdiction and therefore the impugned order warrants interference.

4. Upon due consideration of the aforesaid contention raised by Mr. Shah and upon perusal of the record as well as the impugned order, according to me, there is no jurisdictional error in view taken by the Appeal Court. The Appeal Court, has noted that the learned trial Judge was not justified in dismissing the suit in its entirety. At the highest, some order could have been made to close the evidence of the Plaintiff. The Appeal Court, has examined the matter in some detail and exercised discretion for restoration of the

suit. It cannot be said that there is no unreasonableness in the exercise of such discretion. Though this was a fit case where some costs should have been imposed upon the Plaintiffs.

5. Taking into consideration the situation that the discretion has been exercised in opposite manner by the Appeal Court, there is no unreasonableness in the exercise of such discretion. The impugned order is not been interfered with.

6. Accordingly, this Petition is dismissed.

7. There shall be no order as to costs.

8. However, the direction for expeditious disposal of the suit is reiterated.

9. All parties including in particular, the Plaintiff in the suit to cooperate in the matter for expeditious disposal of the suit by not seeking unnecessary adjournments.

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

(M. S. SONAK, J.)