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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2521 OF 2018

Rajgopal Hiralal Jawahar

..Petitioner.

V/s.

Shri Sankalp Jawahar Mehta & Ors.

..Respondents.

Mr.Samir Kumbhakni for the petitioner.

None for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 15, 2019

ORAL JUDGMENT

Heard Mr.Kumbhakoni, learned counsel for the petitioner.

He points out that service has been effected on the respondents and affidavit of service has also been filed. He submits that some of the respondents have not claimed service, however, the same amounts to service in the eyes of law. Accordingly Rule. Rule made returnable forthwith.

2. Challenge in the petition is to the order dated June 19, 2017 by which the petitioner's evidence came to be closed.

3. From the perusal of the impugned order, it appears that the

petitioner was not diligent in pursuing the matter. Mr.Kumbhakoni, learned counsel for the petitioner points out that earlier the power of attorney was looking after the matter and there might have been somewhat lack of diligence in pursuing the suit. He, however, points out that on the date of the impugned order, there was sufficient cause in not proceeding with the evidence. He submits that the antecedents of such diligence ought not to be taken into consideration.

4. According to me, the conduct of the petitioner was not an irrelevant consideration. The conduct indicates that the petitioner was not all diligent in pursuing the matter and thus, in these circumstances the learned trial Judge made the impugned order. Even the respondent have opposed the grant of any relief in favour of the petitioner but at one stage, submitted that costs of not less than Rs.30,000/- be awarded in case the Court wishes to permit the petitioner to adduce evidence in the matter.

5. Though the petitioner ought to have been more diligent in pursuing the matter, the impugned order whereby the right to lead evidence has been curtailed might result into grave consequences. Taking into consideration all these aspects, learned trial Judge could have perhaps permitted the petitioner to lead evidence subject, no doubt, by imposing substantial costs upon the petitioner.

6. Accordingly, the matter was adjourned in the morning

sessions in order to enable Mr.Kumbhakoni to take instructions as to whether the petitioner is ready to pay costs of Rs.50,000/-. Mr.Kumbhakoni, on the basis of instructions from the petitioner, makes a statement that the petitioner is not in a position to pay costs of Rs.50,000/- but costs of Rs.30,000/- will be paid, if opportunity is granted to the petitioner to lead evidence in the matter.

7. According to me, the payment of costs of Rs.30,000/- can be accepted particularly even when the respondents had indicated this figure while opposing the application made by the petitioner before the trial Judge. No doubt, this was in the year 2017 and unnecessarily the proceedings is being delayed. However, considering the offer made by the petitioner as well as the circumstances, the directions in the impugned order are quite harsh, this petition is disposed of by passing the following order :-

- a) The impugned order dated June 19, 2017 passed by the trial Judge is set aside and the petitioner is granted liberty to lead evidence in the suit;
- b) The aforesaid is subject to the petitioner depositing an amount of Rs.30,000/- by way of costs to be paid to the respondents i.e. defendants within a period of 6 weeks from today;
- c) If the costs as aforesaid are deposited within a period of six weeks

from today, without seeking any extension of time, only then, the petitioner will have the benefit of aforesaid relief granted in this petition;

- d) If there is any default in deposit of the costs as aforesaid, then, this petition shall be deemed to have been dismissed with costs of Rs.10,000/-;
- e) If the costs as aforesaid are indeed deposited within six weeks from today, then the respondents i.e. the defendants in the suit are at liberty to withdraw the same unconditionally;
- f) The interim protection granted earlier in this petition is hereby vacated;
- g) The parties to appear before the learned trial Judge on June 18, 2019 at 11.00 a.m. and furnish an authenticated copy of this order;

8. Rule is made absolute in the aforesaid terms

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

(M.S.SONAK, J.)