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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1230 OF 2019

WITH

WRIT PETITION NO.2908 OF 2019

Arjan Motiram Khiani & Ors.

Applicants.

V/s.

Metharam Rijhumal Khiani & Ors.

..Respondents.

Mr.Ramesh D.Soni with Archit Jayakar & Prasad Savant i/b. M/s. Jaykar & Partners for the applicants.

Mr.Ryan Mendes i/b. Vandana Mehta for respondent Nos.3a & 3b.

Mr.Nitin Thakkar, Senior Advocate with Ms.Harshal Manik i/b. G.C.Mohonty for respondent Nos.5 & 7.

Mr.Farhan Dubhash with Harshal Manik with Mr.G.C.Mohonty for respondent No.6.

CORAM : M.S.SONAK, J.

DATE : MARCH 15, 2019

ORAL JUDGMENT

Heard Mr.Soni, learned counsel for the petitioners, Mr. Thakkar, learned senior counsel for respondent Nos.5 and 7, Mr. Mendes, learned counsel for respondent Nos.3a and 3, Mr.Dubhash, learned counsel for respondent No.6. Respondent No.2 is served. Respondent No.1 has expired and leave is already granted to bring on record his legal representatives which includes respondent Nos.5, 6 and 7, in addition to one more legal representative. Mr.Thakkar states that

he has instructions to appear on behalf of the said legal representative as well.

2. Rule. Rule, made returnable forthwith, by consent of the parties and the matter is heard finally and disposed of.

3. Challenge in this petition is to the orders dated January 7, 2019 and January 24, 2019, the effect of which is that evidence of Ashok Khiani has been closed.

4. Upon perusal of the two orders along with the list of dates mentioned in the affidavit in reply on behalf of respondent No.6, it cannot be said that there is any error in the impugned order. The suit has been directed to be disposed of expeditiously by this Court itself. In the past also, sufficient opportunities were granted to the petitioners. Despite all this, the petitioners, have failed to avail of those opportunities and lead evidence in the matter.

5. Despite the aforesaid and with a view to grant only one last additional opportunity, some indulgence is extended to the petitioners which shall, however, be subject to payment of costs by the petitioners. This is only so that substantial justice is promoted and there is no complaint in future about lack of opportunity to lead evidence.

6. Additional opportunity is also granted, because, it is stated that the evidence of Ashok Khiani is quite vital and if it is not permitted, the suit which was instituted way back in 1981 and which has

proceeded for last 30 years, will be seriously affected.

7. Accordingly, the impugned orders are set aside and leave is granted for examining Ashok Khiani, subject to the following conditions:-

- (a) The petitioners shall, on March 18, 2019 pay to Mr.Mohonty, the advocate on record for defendant Nos.5, 6 and 7 as well as newly impleaded defendant, a demand draft or attorney's cheque in the sum of Rs.6 lakhs. Mr.Mohonty shall accept this amount by way of costs on behalf of all the defendants and appropriately distribute the said amount to all the defendants;
- (b) On March 18, 2019 the petitioners to file affidavit in lieu of examination-in-chief of Ashok Khiani and furnish copies to learned counsel appearing for the defendants on the same date;
- (c) Learned trial Judge is requested to post the matter for cross-examination of Ashok Khiani as early as possible and preferably after two to three days;
- (d) It is made clear that Ashok Khiani will not produce any documents, other than the documents included in the compilation already produced / filed on record;
- (e) In case the amount of costs, as aforesaid are not paid by March 18, 2019 before the matter proceeds on the said date, then, the petition shall be deemed to have been dismissed without further

reference to this Court with costs of Rs.6 lakhs;

- (f) The time limit for disposal of the suit is extended upto April 30, 2019;
- (g) If after conclusion of evidence of Ashok Khiani any of the defendants desire to lead any further evidence, they are granted liberty to to so, notwithstanding their earlier pursis closing their evidence. This liberty is granted because the defendants closed their evidence on the basis that there would be no liberty to the plaintiffs to lead further evidence;

8. Writ Petition No.1230 of 2019 is disposed of in the above terms.

9. In view of the order made in Writ Petition No.1230 of 2019, learned counsel for the petitioners does not press any relief in Writ Petition No.2908 of 2019 as the subject matter of Writ Petition No.2908 of 2019 was challenge to the order dated January 7, 2019 which merged in the order dated January 24, 2019 and have already been set aside in the order made in Writ Petition No.1230 of 2019. Accordingly, Writ Petition No.2908 of 2019 is also disposed of.

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

(M.S.SONAK, J.)