

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.3288 OF 2019

M/s. J.C. Supreme Infacon Private Ltd. & Anr. ...Petitioners

vs.

Mahesh Shashikant Chaskar and Ors. ...Respondents

WITH

WRIT PETITION (ST.) NO.10297 OF 2018

Evika Trojik ...Petitioner

vs.

Mahesh Shashikant Chaskar and Ors. ...Respondents

Mr. S.S. Kanetkar, for the Petitioners in WPST.No. 3288 of 2019.

Mr. V.S. Kapse, for the Petitioners in WPST.No. 10297 of 2018

Mr. T.D. Deshmukh, for the Respondents.

CORAM : M. S. SONAK, J.

DATE : MARCH 28, 2019

JUDGMENT

. Mr. Kapse, learned counsel for the Petitioner in Writ Petition (St.) No. 10297 of 2018 on the basis of instruction from the Petitioner who is present in the Court seeks leave to withdraw this Petition.

2. Accordingly, leave is granted and this Petition is disposed of as withdrawn.

3. Heard Mr. Kanetkar, learned counsel for the Petitioners Writ Petition (St.) No. 3288 of 2019 and Mr. T.D. Deshmukh, learned counsel for the Respondents.

4. Rule. Rule is made returnable forthwith with consent of and the request of learned counsel for the parties.

5. The challenge in this Petition is to the orders dated 5th January, 2018 and 14th December, 2018. By order dated 5th January, 2018 the Petitioners who are the Defendants in the suit were barred from leading the evidence because they failed to pay cost of Rs. 3,500/- awarded in favour of the Respondents on the earlier occasion.

6. By order dated 14th December, 2018 the learned trial Judge has dismissed the application for setting aside the “no cross” order dated 13th September, 2017 below Exhibit 61. Mr. Kanetkar submits that the amount of cost have been paid after some delay. He submits that the failure to pay the costs was not deliberate. He submits that the Petitioners had filed a transfer Petition for clubbing the present suit with another suit. He submits that since

some orders were soon expected, the Petitioners did not proceed with the cross examination. He submits that the consequences of the impugned order are quite harsh and disproportionate. He submits that prejudice to the Respondents could always have been compensated in terms of costs. On the basis of instructions, he states that Petitioners are prepared to pay the cost of Rs. 50,000/- to the Respondents.

7. Mr. Deshmukh, learned counsel for the Respondents defends the impugned order on the basis of reasoning reflected therein. In particular, he points out that the observations made by learned trial Judge in paragraph Nos. 5 to 7 of the impugned order and submit that the conduct of the Petitioners dis-entitled the Petitioners to any equitable relief under Article 227 of the Constitution of India. He submits that the Petitioners have unnecessarily delayed the proceeding before the trial Judge and therefore this Court may not interfere with the impugned order.

8. The rival contentions now fall for determination.

9. In so far as the order dated 5th January, 2018 is concerned it

is true that there was default on the part of the Petitioners. However, the costs have been subsequently paid. The explanation offered by the Petitioners is also quite reasonable. The consequences of closer of evidence will be quite disproportionate. For all these reasons, the impugned order dated 5th January, 2018 is set aside and the Petitioners are granted liberty to lead their evidence. However, the Petitioners to lead their evidence with diligence and not seek any unnecessary adjournment in the matter and protract the proceeding before the learned trial Judge.

10. In so far as the order dated 13th September, 2017 and 14th December, 2018 are concerned, from the perusal of the order dated 14th December, 2018 it does appear that the Petitioner was bent upon delaying the proceeding before the learned trial Judge. There was really no justification for the Petitioner seeking adjournment or even filing frivolous application only in order to delay the proceeding. The order dated 13th September, 2017 by which the Petitioner has been deprived of opportunity of cross examination, is too harsh. No doubt, prejudice is bound to occasion to the Respondents if this order is set aside. However, the prejudice can be compensated by award of cost of Rs. 50,000/- as offered by the

Petitioner. Therefore, in order to promote substantial justice, the impugned orders dated 5th January, 2018 and 13th September, 2017 and 14th December, 2018 are hereby set aside.

11. The Petitioner is granted opportunity of cross examining Respondent No. 1 (Plaintiff No. 1).

12. The parties are directed to appear before the trial Court on 12th April, 2019 at 11.00 am and file authenticated copy of this order. On the said date, the Respondent No. 1 will make himself available for cross examination. Mr. Kanetkar states that cross examination will begin on the said date without seeking any adjournment.

13. The aforesaid relief is granted to the Petitioner subject to paying cost of Rs.. 50,000/- to Respondent No. 1. Mr. Kanetkar hands in a Demand Draft of Rs. 50,000/- drawn in the name of Respondent No. 1. The Respondent No. 1 is to accept such costs for himself and on behalf of Respondent No. 2.

14. Rule is made absolute in the aforesaid terms.

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

16. The learned trial Judge is directed to dispose of Special Civil Suit No. 2023 of 2011 as expeditiously as possible and in any case on or before 31st December, 2019.

(M. S. SONAK, J.)