

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2194 OF 2017

Vishwanath Ganpat Gulve and Ors. ...Petitioners
vs.
Ashwini Anil Kulkarni and Ors. ...Respondents

Mr. R.N. Gite, for the Petitioners
Ms. Pinaz Contractor, for Respondent Nos. 2 and 3.

CORAM : M. S. SONAK, J.

DATE : APRIL 02, 2019

JUDGMENT

. Heard Mr. Gite, learned counsel for the Petitioners and
Ms. Contractor, for Respondent Nos. 2 and 3.

2. On 14th March, 2019 this Court made the following
order:

*“1. Issue fresh notice to respondent No.1 returnable on 2nd April, 2019. The notice to indicate that this petition will be disposed of finally at the stage of admission. Ms. Pinaz Contractor appears for respondent Nos. 2 and 3.
2. In addition to usual mode of service, private service is permitted. The petitioner to file affidavit of service.
3. The learned Trial Judge is requested to adjourn the further hearing in the suit for some date beyond 2nd April, 2019.”*

3. Mr. Gite now submits that all the Respondents are served and affidavit of service is also filed.

4. Accordingly, Rule. Rule is made returnable forthwith in

view of the order dated 14th March, 2019.

5. The challenge in this Petition is to the order dated 2nd February, 2017 by which the Petitioners' evidence is closed. The record indicates that the Petitioners had instituted the Petition in this Court and on that ground the Petitioners were not ready to proceed with the evidence. Such a ground for not proceeding with the evidence was not at all justifiable. Merely because the Petition is filed in this Court, the Petitioners cannot be refused to proceed in the trial Court in relation to stay. Mr. Gite however further submits that there was lapse on the part of the Petitioners but on account of lapse, such drastic order of closer may not be permitted. He submits that the prejudice, if any, the Respondents can always be compensated on the basis of costs.

6. On the basis of instruction from the Petitioner, communicated through the advocate appears before the trial Court, Mr. Gite submits that the Petitioners are willing to offer costs of Rs. 30,000/-.

7. Ms. Contractor, learned counsel for Respondent Nos. 2 and 3 point out that at least three opportunities were given to the Petitioners to lead their evidence. She points out that the matters has been adjourned on as much as 21 dates at the behest of the

Petitioners. She therefore submits that this Petition warrants dismissal with costs.

8. According to me, though much can be said about the conduct of the Petitioners, the impugned order is harsh as the Petitioners have been precluded for leading any evidence in the matter. No doubt, prejudice will occasion to the Respondents but this can be compensated by award of cost of Rs. 30,000/- .

9. Therefore, the impugned order dated 2nd February, 2017 is set aside.

10. The Petitioners are permitted to lead their evidence in the matter subject to payment of cost of Rs. 30,000/- within a period of four weeks from today.

11. The cost to be paid to Respondent Nos. 2 and 3. If there is any difficulty in payment of costs, the same to be deposited before the learned trial Court from where the Respondent Nos. 2 and can withdraw the same unconditionally.

12. If the costs are not paid or deposited within four weeks from today, then this Petition shall be deemed to have been dismissed with costs of Rs. 10,000/-.

13. Since now liberty is granted to the Petitioners to lead their evidence, there shall be similar liberty to the Respondents/

Defendants for leading their evidence also, if they so desire. This is only appropriate because the Respondents cannot be restricted to the evidence which they earlier lead when the Petitioners have been granted liberty to lead their evidence in the matter.

14. Both the parties to cooperate with the learned trial Judge for early disposal of the matter. The learned trial Judge is expected not to grant any further adjournments in the matter.

15. The proceeding in the suit are ordered to be expedited.

16. Rule is made absolute in the aforesaid terms.

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

(M. S. SONAK, J.)