

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2964 OF 2013

Shri Satish Mahadev Atigre and Anr. ... Petitioners

Vs

Shri Tatoba @ Balu Babu Atigre and Ors. ... Respondents

...

Mr. P.M.Arjunwadkar for the Petitioners.

CORAM : SANDEEP K. SHINDE J.

DATE : JULY 11, 2019

P.C. :

Petitioners take exception to the order dated 18th January, 2013 passed by the learned Joint Civil Judge, Junior Division, Kurundwad, by which the application for setting aside the 'Evidence Close Order' dated 17th December, 2012 passed by the trial Court against the petitioners/original plaintiffs came to be rejected.

2 This Court on 25th March, 2013 issued, notice to the respondents and in the meantime, further proceedings in Regular Civil Suit No.111 of 2002 were stayed.

3 Though the respondents are served, they have not caused their appearance and thus, petition is taken up for hearing.

4 Heard learned counsel for the petitioners. Mr. Arjunwadkar, the learned counsel for the petitioners, has brought to my notice a leave note filed by advocate Mr. J.J.Pomaje seeking leave from 19th November, 2012 till 30th November, 2012. He submits that advocate Mr. J.J. Pomaje was representing plaintiffs but due to illness, he could not remain present to examine the next witness. It appears that the trial Court afforded sufficient opportunity to the plaintiffs to lead the evidence and to accommodate him. Proceedings were adjourned at-least on four occasions. However, plaintiffs did not take steps to lead further evidence and, therefore, the trial Court closed the evidence of the plaintiffs on 17th December, 2012. After this date, defendants filed their affidavit in lieu of examination-in-chief on 9th January, 2013 and thereafter an application was filed by the plaintiffs to set aside 'Evidence Close order'. The learned trial Judge rejected the said application on 18th January, 2013 against which this Writ Petition.

5 Leave note dated 3rd November, 2012 which is at Page 56 filed by the advocate shows that he was unwell and was not

attending the Court when the suit was posted for leading the evidence. In my view, the plaintiffs were, therefore, prevented by 'sufficient cause' from leading the evidence. In view of this, the order dated 18th January, 2013 is quashed and set aside. Application dated 9th January, 2013 filed below Exhibit 140/D is allowed subject to cost quantified at Rs.25,000/-. Petitioners/plaintiffs shall deposit cost in the trial Court within four weeks from today. The learned trial Court shall permit defendants to withdraw the cost unconditionally. Since the suit is pending since 2002, hearing of the suit is expedited. The learned counsel for the petitioners on instructions undertakes that plaintiffs shall not seek adjournments unnecessarily and co-operate for expeditious disposal of the suit.

6 Thus, upon consideration of the fact, the learned trial Judge is requested to dispose of the suit preferably before 31st March, 2020. Petition is allowed and disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)