

3SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******WRIT PETITION NO.3372 OF 2019***

Ibrahim Pir Bhai Shaikh & Ors.	..Petitioners.
V/s.	
Babu Miya Ismail Sheikh & Ors.	..Respondents.

Mr.Ish Jain with Yash Agrawal i/b. Kiran Jain & Co. for the petitioners.

Ms.Asbiya Cutchi i/b. K.K.Associates for the respondents.

CORAM : M.S.SONAK, J.

DATE : MARCH 15, 2019

P.C.:-

Not on board. Upon mentioning taken on production board.

2. Heard learned counsel for the parties.
3. By consent, the following order is made :-
 - a) The orders dated June 28, 2018, July 10, 2018 and February 4, 2019 are quashed and set aside. It means that both the plaintiffs and the defendants are granted opportunity to lead their evidence;
 - b) The plaintiff, who has filed the affidavit in lieu of evidence on November 30, 2015, is granted opportunity to present himself for cross-examination on the next date, which shall be April 8, 2019

at 11.00 a.m.. On that date or on some further date as per the convenience of learned trial Judge, the plaintiff will be cross-examined.

- c) It is made clear that no unnecessary adjournment will be granted for this purpose and the plaintiff will have to make himself available on the date fixed for cross-examination;
- d) In case the plaintiffs desire to lead any further evidence in the matter they are at liberty to do so, provided, they do not seek unnecessary adjournment for the purpose;
- e) After the conclusion of evidence on behalf of the plaintiffs, the defendants should be given opportunity to proceed with their evidence. Again, the defendants should not seek unnecessary adjournments for this purpose;
- f) Both the plaintiffs and the defendants to pay an amount of Rs.25,000/- each to the Tata Memorial Hospital, which treats cancer patients within the period of two weeks, from the date on which the order is uploaded on the website. This means that all the petitioners together to pay costs of Rs.25,000/- to the Tata Memorial Hospital and all the respondents together to pay costs of Rs.25,000/- to the Tata Memorial Hospital;
- g) The proof of such payments to be filed in this Court as well as learned trial Court within a period of one week thereafter;

- h) In case this amount of costs are not paid, by the petitioners, this petition shall be deemed to have been dismissed without further reference to the Court;
- i) Similarly, if the plaintiffs i.e. the respondents in this petition do not pay the costs, then, they shall not be entitled to any relief in terms of this order. This means that the orders dated June 28, 2018 and July 10, 2018 made by learned trial Judge will be deemed to have been confirmed *qua* the respondents;
- j) Parties to appear before the trial Court on April 8, 2019 at 11.00 a.m. as aforesaid;

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

(M.S.SONAK, J.)