

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**WRIT PETITION NO. 4915 OF 2019**

Shri Mahesh Keshav Kale .. Petitioner  
Vs.  
Shanti Daughter of Mahadu Chavan  
deceased thru. Heirs  
1A. Shri Natha Changdeo Shinde and ors. .. Respondents

Mr.U.B.Nighot, for the Petitioner.  
Mr.Samir M.Suryawanshi, for the Respondent No.2.

**CORAM : M.S.KARNIK, J.**

**DATE :19<sup>th</sup> SEPTEMBER 2019**

**PC. :**

. The petitioner is original plaintiff. The plaintiff filed Suit for specific performance against respondent No.1. Learned Counsel for petitioner has filed affidavit of service of having served respondent No.1A in terms of order dated 30/08/2019 passed by this Court. The same is taken on record and marked 'X' for identification. In the affidavit it is stated that respondent No.1A refused to accept the notice which was attempted to be

served by hand delivery.

2. Learned Counsel for the respondent No.2 has no objection if the Petition is allowed.

3. The Suit is of the year 1995. The plaintiff filed his affidavit of evidence as far back as on 13/02/2014. Since then, the Suit was fixed for the cross examination of the plaintiff. For one reason or the other, plaintiff did not offer himself for cross examination. Later on for the reasons mentioned in the application - Exhibit 91, plaintiff submitted that he may be permitted to lead evidence. The trial Court rejected the application as despite having granted sufficient opportunities to the plaintiff to adduce his evidence, plaintiff failed to make himself available for the cross examination. When the matter had come up for admission before this Court on 18/04/2019, this Court had directed the petitioner to deposit security of cost of Rs.25,000/- before learned trial Judge on or before 23/04/2019. Learned Counsel for the petitioner states that the

said costs have been deposited. There is no contest on behalf of the respondent No.1 to this Petition despite service of notice.

4. No doubt, the plaintiff has not been diligent in prosecuting the Suit. However, plaintiff's right to adduce evidence should not be taken away as no prejudice would be caused to the defendant No.1 if plaintiff is allowed to adduce evidence and in case when defendant can be compensated with costs. In the interest of justice and with a view to give one opportunity to the plaintiff to lead evidence, the application Exhibit 91 deserves to be allowed subject to cost of Rs.25,000/-. Cost of Rs.25,000/- has already been deposited with the trial Court which defendants No. 1A & 1B are permitted to withdraw. It is however made clear that the plaintiff will co-operate with the trial Court in the expeditious disposal of the Suit. Learned Counsel for the petitioner states that the plaintiff will offer himself for cross examination on the date fixed by the learned trial Court. He would further co-operate with the trial Judge for the expeditious disposal of the Suit. Considering the Suit is of

the year 1997, the trial Court is requested to decide the Suit expeditiously and preferably within a period of 9 months from today. It is made clear that the trial Court will not grant any unnecessary adjournment at the instance of the plaintiff.

5. Petition is allowed. The impugned order is set aside. Exhibit 91 is allowed. It is made clear that after the plaintiff's evidence, defendants can always lead their evidence.

**(M.S.KARNIK, J.)**