

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6404 OF 2019

M/s. G. Loucatos & Co. ... Petitioner
Vs.
Binani Industries Limited ... Respondent

Mr. N.V. Walawalkar, Senior Advocate a/w. Mr. Nishant Vyas, Mr. Yagnesh Vyas for Petitioners.
Mr. Jaydeep Deo for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JUNE 11, 2019

P.C. :

Heard Mr. Walawalkar, learned Counsel for the petitioners and Mr. Deo, learned Counsel for the respondents at length.

2. This Petition takes exception to the order dated 28.03.2019 as also order dated 22.04.2019 below exhibit-50 in R.A.E.Suit No.666/1013 of 2009 passed by the learned trial Judge. By order dated 28.03.2019, the learned trial Judge closed the plaintiff's cross-examination. By order dated 22.04.2019 below exhibit-50, the learned trial Judge rejected application filed by the petitioner seeking review of order dated 28.03.2019. Rule. Mr. Deo waives service for the respondents. In view of the narrow controversy raised in this Petition, Petition is taken up for final hearing.

3. Respondents have instituted Suit being R.A.E.Suit No.666/1013 of 2009 against the present petitioners for eviction. It appears that by orders dated 25.04.2018 and 04.10.2018, Commission was issued for examination of the plaintiff's witness. Writ Petition No.13538 of 2018 was instituted by the petitioners challenging those orders. After the

matter was argued for quite some time, the learned Counsel for the parties agreed for disposal of the Petition. It was agreed that the trial Court would fix two dates as per its convenience for further cross-examination of the plaintiff's witness in the Court itself. The learned Counsel for the parties assured that the cross-examination would be concluded if two such dates were granted. It was observed that 'needless to add that the cross-examination shall not be unnecessarily interrupted or curtailed'. The petitioners to ensure that the cross-examination will not be unnecessarily prolonged taking into consideration the health of the witness's wife. The learned trial Judge was directed to offer a fair opportunity to both the parties so that the cross-examination be effectively held and completed within the two dates so fixed by it. As the Suit pertains to the year 2009, the learned trial Judge was directed to dispose of the Suit expeditiously. The Petition was disposed of on 04.12.2018.

4. In pursuance of the directions, the learned trial Judge fixed the matter for cross-examination of the plaintiff's witness on 08.03.2019. On that day, defendant cross-examined plaintiff's witness from 11.00 a.m. till 1.45 p.m. At 1.45 p.m., defendant sought adjournment. The matter was adjourned to 28.03.2019. On 28.03.2019, plaintiff's witness was present at about 11.00 a.m. Advocates for the plaintiff and defendant were absent. Later on, Advocates for the plaintiff and defendant appeared and cross-examination started at 11.45 a.m. and cross-examination was deferred due to lunch recess. After lunch recess, cross-examination started and was conducted upto 5.30 p.m. In view of the order dated 04.12.2018 passed by this Court in Writ Petition No.13538 of 2018 expecting defendant's Advocate to complete the cross-examination of the plaintiff's witness in two dates, the learned trial Judge concluded the cross-examination of the plaintiff's witness. The

petitioner filed application exhibit-50 seeking review of that order. By order dated 22.04.2019, the learned trial Judge rejected the application.

5. In support of this Petition, Mr. Walawalkar has taken me through the proceedings of 08.03.2019. In the proceedings of 08.03.2019, the contention raised on behalf of the plaintiff that defendant had taken cross-examination on two dates and therefore, the cross-examination be concluded was noted. The submission on behalf of the defendant that cross-examination is not completed and defendant wants to file appropriate proceedings before the High Court for extension of time to cross examine, and therefore, cross-examination may not be concluded was also noted. After referring to order dated 04.12.2018 passed by this Court in Writ Petition No.13538 of 2018, the learned trial Judge concluded the cross-examination of the plaintiff.

6. Mr. Walawalkar submitted that in fact Civil Application was affirmed on 01.04.2019 and was to be filed in this Court for extension of time for completing cross-examination of the plaintiff's witness. However, as on 28.03.2019 itself, the learned trial Judge concluded cross-examination of the plaintiff's witness, the said application was not filed. He further submitted that as the plaintiff's witness produced voluminous record, the cross-examination could not be concluded on two dates fixed by the trial Court.

7. On instructions, Mr. Walawalkar assured that if defendants are permitted to cross-examine plaintiff's witness, they will conclude the cross-examination within three dates. He further states that in case the cross-examination is not concluded within three dates so fixed by the trial Court, plaintiff's witness shall stand discharged. Statements made by Mr. Walawalkar, on instructions, are accepted in the form of

undertaking to this Court.

8. As against this, Mr. Deo supported the impugned orders. He submitted that defendants gave notice dated 20.03.2019 calling upon the plaintiffs to produce certain documents. It is only because of the notice of production given by the defendants, plaintiffs produced the documents on 26.03.2019. It, therefore, cannot be said that plaintiffs produced voluminous documents because of which cross-examination of the plaintiff's witness could not be concluded. It is creation of the defendants and for which plaintiffs cannot be blamed. He submitted that plaintiff's witness is under cross-examination for more than two years. He has also taken me through the findings recorded by the learned trial Judge in the order dated 22.04.2019 and submitted that no ground is made out for interfering with the impugned orders.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 12, the learned trial Judge has noted the conduct of the defendant's Advocate while addressing the Court on 04.04.2019 when the application exhibit-50 seeking review of order dated 28.03.2019 was filed. The matter was therefore adjourned so as to enable Advocate appearing for the defendants to address this court as to whether the observations made in paragraph 12 are factually correct or not. He was also given opportunity to tender apology to the learned trial Judge and file undertaking to the effect that he will not repeat such behaviour in any Court hereafter. In pursuance thereof, undertaking dated 10.06.2019 is filed, which is taken on record and marked 'X' for identification. Undertaking given by the concerned Advocate is accepted.

10. It appears that earlier, by orders dated 25.04.2018 and 04.10.2018, Commission was issued for examination of the plaintiff's witness. In other words, plaintiff's witness was not be examined in the open Court. These orders were challenged by filing Writ Petition in this Court. By consent of the parties, Writ Petition was disposed of on 04.12.2018. The learned trial Judge was directed to fix two dates as per its convenience for further cross-examination of the plaintiff's witness in the Court itself. The assurance of the parties that cross-examination will be concluded if such two dates were granted was recorded. The assurance of the defendants that cross-examination will not be unnecessarily prolonged taking into consideration the health of the witness's wife was also recorded. By order dated 04.12.2018, this Court had directed the trial Court to fix two dates as per its convenience for further cross-examination of the plaintiff's witness in the Court itself.

11. In view thereof, it was expected from the defendants to complete the cross-examination on the two dates fixed by the trial Court. As mentioned earlier, the learned trial Judge had fixed the cross-examination of plaintiff's witness on 08.03.2019. On 08.03.2019, cross-examination of the plaintiff's witness started at 11.00 a.m. and concluded at about 1.45 p.m. Though the learned Counsel for the defendant was aware about fixing of two dates in pursuance of this Court's order, oral request for adjournment till next date was made. Thus, at the behest of the defendants, cross-examination was deferred till 28.03.2019. On 28.03.2019, plaintiff's witness was present at 11.00 a.m. Instead of commencing the cross-examination at 11.00 a.m., it started at 11.45 a.m. and continued upto lunch recess. After lunch recess, cross-examination was conducted upto 5.30 p.m. Thus, I do not find that the trial Court committed any error in concluding the cross-examination of the plaintiff's witness as the learned trial Judge was bound by the order

passed by this Court. No fault, therefore, can be found with the order passed by the trial Court concluding the cross-examination of the plaintiff's witness. This is more so when two dates were fixed keeping in mind that plaintiff's witness was under cross-examination for more than two years as also keeping in mind health condition of the plaintiff's wife. Be that as it may, Mr. Walawalkar, on instructions, has stated that on three dates so fixed by the trial Court, defendant will complete the cross-examination of the plaintiff's witness and in case they are unable to complete the cross-examination, the witness of the plaintiff shall stand discharged. Mr. Deo assures that plaintiff's witness will extend full co-operation for completing cross-examination on the three dates to be fixed by the trial Court.

11. It is common ground between the parties that the next date fixed by the trial Court is 17.07.2019. In view thereof, the learned trial Judge is requested to fix the suitable date and thereafter the cross-examination shall be completed on three dates so fixed. The impugned orders dated 28.03.2019 and 22.04.2019 are set aside. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab