

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (st.) NO.28259 OF 2018

Shri. Madhav Vishwanath Labhade and Ors. .. Petitioners
Versus
Shri. Ramesh Gangadhar Kavade & Ors. .. Respondents

Mrs. Avanti Inamdar I/b Mr. R.N. Gite for petitioners.
Mr. Girish R. Agrawal for respondent Nos.1 to 3.

CORAM : K.K. TATED, J.

DATE : 22 JANUARY 2019.

P.C:-

. Heard learned Counsel for the parties.

2. By this writ petition under Article 227 of the Constitution of India petitioner/original defendant is challenging order dated 18.08.2018 passed by the learned Joint Civil Judge, Junior Division, Yeola, Nashik below Exhibit-53 in Regular Civil Suit No. 155 of 2013 rejecting petitioner's/original defendant's application for issuing witness summons for examination of witnesses.

3. In the present proceedings, the respondent/original plaintiff filed their Regular Civil Suit No.155 of 2013 for possession and other reliefs. In that suit, the trial Court framed issues on 06.02.2014 and thereafter additional issues were framed on 27.08.2015. Thereafter, the respondent/plaintiff entered into witness box and completed his evidence. Petitioner/defendant also examined his witnesses. Thereafter, the petitioner/original defendant filed list of witnesses on 14.02.2018 giving the names of

6 witnesses. Same was taken on record by the trial Court. Court below by its order dated 17.03.2018, called upon the defendant to show nexus or on which point defendant want to examine these 6 witnesses. As the defendant failed to disclose the reasons as required under Order 16 Rule 1 of Civil Procedure Code, the trial Court rejected their application for issuing witness summons. Hence, present writ petition.

4. Learned Counsel appearing on behalf of petitioner submits that the trial Court erred in coming to the conclusion that petitioner/original defendant failed to disclose any reason for issuing witness summons. She submits that in the present proceedings they want to show their possession in respect of suit property and for that purpose they wanted to examine these 6 witnesses. She further submits that trial Court atleast in the interest of justice should have allowed their application for issuing witness summons. She submits that if their application below Exhibit-56 is not allowed, irreparable loss and injury will cause to them. She submits that this Hon'ble Court be pleased to allow the present writ petition by setting aside the order dated 18.08.2018 passed by the trial Court and allow their application below Exhibit-53.

5. On the other hand, learned Counsel appearing on behalf of respondent/original plaintiff vehemently opposed the present writ petition. He submits that in the present proceedings the petitioner/original defendant filed list of witnesses at belated stage. He submits that as per the provisions of Order 16 Rule 1 of CPC they should have filed list of witnesses within 15 days from the date of framing of the issues. Apart from that the petitioner

failed to disclose the reason why they want to call those witnesses for leading evidence. Learned Counsel for the respondent submits that Apex Court in the matter of **Kokkanda B. Poondacha & Ors. Vs. K.D. Ganapthi & Anr.**¹ held that list of witnesses is to be filed within time. If the application is made at belated stage, Court should not entertain the said application. He relies on paragraph 16 of the said judgment which reads thus :

“16. We may add that if the parties to the litigation are allowed to file list of witnesses without indicating the purpose for summoning the particular person(s) as witness(es), the unscrupulous litigants may create a situation where the cases may be prolonged for years together. Such litigants may include the name of the advocate representing the other side as a witness and if the Court casually accepts the list of witnesses, the other side will be deprived of the services of the advocate. Therefore, it would be a prudent exercise of discretion by the Court to insist that the party filing the list of witnesses should briefly indicate the purpose of summoning the particular person as a witnesses.”

6. He also relies on another two authorities in the matter of **Anil Ramesh Bhusari Vs. Bhaskar Ramesh Bhusari & Ors.**² and the judgment in the matter of **M/s. M.M. Corporation Vs. The Juhu Vile Parle Development**³.

7. On the basis of these authorities and the facts, the learned Counsel for the respondent submits that there is no substance in the writ petition and same is required to be dismissed. He submits that the petitioner on one or the other way

1 2011 ALL SCR 971

2 2015 (1) ALL MR 724

3 2010 ALL MR (Supp.) 583

is trying to prolong the hearing and final disposal of the suit. He submits that earlier the petitioner has filed writ petition No.625 of 2017 challenging order passed by the trial Court under Order 6 Rule 17 of the Civil Procedure Code, 1908. That petition was also stood dismissed. To that effect, he has placed on record the photocopy of the order dated 11.09.2017 passed in writ petition No.625 of 2017. On the basis of these submissions, the learned Counsel for the respondent submits that there is no substance in the present writ petition and same is required to be dismissed with cost.

8. It is to be noted that the petitioner/original defendant failed to comply the provisions of Order 16 Rule 1 of CPC. The defendant filed their list of witnesses in the year 2018 whereas the issues were framed on 27.08.2015. Apart from that when the trial Court called upon the petitioner original defendant to explain why they want to call all those witnesses, they failed to give proper explanation. Those facts were recorded by the trial Court in the impugned order in paragraph 3. Considering these facts and as the petitioner failed to comply the provisions of Order 16 Rule 1 of CPC and in view of the Apex Court's Judgment in the matter of **Kokkanda B. Poondacha & Ors. (Supra)**, I do not find any reason to entertain the present writ petition.

9. Hence, writ petition stands rejected.

10. No order as to costs.

(K.K.TATED, J.)