

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

WRIT PETITION NO.12709 OF 2015

Dr. Manish Satish Beri and Anr. ... Petitioners
Vs
Shri Sahil Pramod Parekh and Ors. ... Respondents
...
Mr. Ashok B. Tajane for the Petitioners.
Mr. Sharad Bhosale I/by Dilip Bodake for the Respondent
No.1.

CORAM : SANDEEP K. SHINDE J.
DATE : JUNE 14, 2019

P.C. :

Heard learned counsel for the parties.

2 Petitioners are the defendants against whom Special Summary Suit No.101 of 2010 is pending in the Court of Civil Judge, Senior Division, Pune for recovery of sum of Rs.12,80,970/-. Plaintiffs' led evidence on 21st November, 2011 and their witness was partly cross-examined on 28th October, 2014, 29th October, 2014 and 17th January, 2015, but since the cross-examination was incomplete, it was deferred to 27th July, 2015. On this date, neither defendants nor their advocate was present, thus, the learned Judge

closed the cross-examination of the plaintiff's witness. Thereafter, on the very date, application was moved to set aside the order of 'No further cross-examination'. However, the learned Judge rejected the said application as defendants were not in a position to cross-examine the plaintiff's witness, who was present in the Court at the relevant time. In October, 2015, i.e., nearly after two months defendant nos.1 and 2 applied, for review of the order dated 27th July, 2015. The learned Judge rejected the said application vide order dated 28th October, 2015. This order is under challenge in this petition filed under Article 227 of the Constitution of India.

3 On 28th March, 2016, this Court has passed following order, which reads thus:

“3. Mr.Tajane assures that if no cross order is set aside, the petitioners will complete cross examination within one day's time. He further states that within one week from today, the petitioners will deposit Rs. 15000/- in this Court. He further states that the next date of hearing before the trial Court is 16.4.2016.

4. In view of the submissions, issue notice to respondent no.1, being the only contesting respondent, returnable on 25.4.2016. The petitioners shall produce copy of Roznama on the next date of hearing.

5. Subject to the petitioners depositing Rs.15000/- in this Court within one week from today, there shall be an interim order in terms of prayer clause (c).

6. Apart from Court service, the petitioners are at liberty to serve the respondent/s privately by R.P.A.D/Speed 3/3 WP/12709/2015 Post/Courier and shall file affidavit of service along with acknowledgment/s before the next date of hearing. Office shall not accept affidavit of service, unless accompanied by acknowledgment.”

4 The learned counsel for the petitioners, submits that the petitioners have deposited Rs.15,000/- as directed by this Court in terms of Clause (iii) of the order dated 28th March, 2016 and the respondents were served on 31st August, 2016. The learned counsel submits that he is willing to complete the cross-examination, within a day's time as assured and further since he has deposited the cost, petition may be allowed and the order dated 27th July, 2015 passed by the learned Judge may be quashed and set aside.

5 It may be stated that subject suit was instituted in the year 2010, “No further cross-examination”, order was passed on 27th

July, 2015 for the default on the part of defendants. On 27th July, 2015 witness under cross-examination was present in the Court, however, petitioners were not willing to cross-examine him when they applied for recalling of the order of “No further cross-examination”. Defendants sought review of the order dated 27th July, 2015 merely after two months. This lapse on their part has not been explained by the Petitioner but assured the Court that he would complete cross-examination within a day and deposit Rs.15,000/-. However, record shows that after effecting the service on the respondents in August, 2016, petitioners have not pursued the petition but thought it appropriate to wait for more than 3 years. Thus, assurance given to this Court as recorded in Clause 3 of the order dated 28th March, 2016 was not in true spirit. The manner in which petition is being pursued clearly indicates that the petitioners, who were defendants in the money suit were not interested to further progress of the suit.

6 The Apex Court in the case of **Shiv Cotex v. Tirgun Auto Plast (P) Ltd 2011 9 SCC 678** wherein it has been held as under:

“15. It is sad, but true, that the litigants seek- and the courts grant-adjournments at the drop of the hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation.”

The Court has further laid down that:

“15.....It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further.”

. Order 17 Rule 3 of the Code of Civil Procedure, 1908 empowers the Court to proceed to decide the suit if any party to the suit to whom time has been granted fails to produce his evidence or cause attendance of his witness to further progress of the suit, for which time has been allowed. In the case in hand this Court vide order dated 28th March, 2018 afforded an opportunity to the Petitioner to fulfill his assurance in true and bonafide spirit. However, instead of cross-examining the plaintiff's witness, petitioners kept the matter pending to prolong the litigation.

7 Thus, taking into consideration facts of the case and the dictum of the Hon'ble Supreme Court in **Shiv Cotex (Supra)**, in my view, for the reasons stated, petition deserves no consideration and is, accordingly, rejected.

8 The learned Trial Judge shall proceed to decide the Special Summary Suit No.101 of 2010 as expeditiously as possible and preferably before 31st March, 2020.

9 Petition is, accordingly, disposed of.

(SANDEEP K. SHINDE, J.)