

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

**WRIT PETITION NO. 13189 OF 2017
WITH
WRIT PETITION NO. 13251 OF 2017
WITH
WRIT PETITION NO. 13257 OF 2017**

Suman Vitthalrao Jaikar

... Petitioner

V/s.

Gunabai Shivram Kamble
(Since deceased) and Ors.

... Respondents

Mr. Sandeep Phatak for the Petitioner.
Mr. Ravi Kadam for the Respondent Nos. 2, 4, 5 and 7.

**CORAM : M.S.SONAK, J.
DATE : 15TH APRIL, 2019**

:ORAL JUDGMENT:

1. Heard Mr. Phatak for the Petitioner and Mr. Ravi Kadam for Respondent Nos. 2, 4, 5 and 7.
2. Mr. Phatak, learned Counsel for the Petitioner states that the Respondents whom Mr. Kadam represents are really contesting Respondents. He submits that, in any case, other Respondents have also been served and affidavits of service has also been filed.
3. Accordingly, rule is granted in each of these petitions and the same is made returnable forthwith.
4. In Writ Petition No. 13189 of 2017 challenge is to the order

dated 09.11.2017 by which the evidence of Petitioner-Plaintiff in Special Civil Suit No. 267 of 1999 was closed.

5. Mr. Phatak, learned Counsel for the Petitioner points out that on the date when no cross order was made, the learned Counsel appearing for the Plaintiff could not remain present because her Senior had passed away. He points out that the learned Counsel did appear on the same date at the later stage and made a request for opportunity / adjournment, however, this was declined.

6. According to me, there was sufficient cause to adjourn the matter and the learned Trial Judge should have granted the Petitioner yet another opportunity to proceed with evidence in the matter. It is true that the suit relates for the year 1999. However, taking into consideration, the reason stated, an adjournment was due. In any case, opportunity should have been granted, if necessary by imposing some costs upon the Petitioner.

7. Accordingly, the impugned order dated 09.11.2017 is set aside. The order depriving the Petitioner to lead further evidence is also set aside. This is subject to Petitioner paying costs of Rs.5,000/- to the Respondents. The costs to be paid to the Respondents who appeared through Mr. Kadam, within four weeks from today or deposited in the Trial Court, from where the said Respondents can unconditionally

withdraw the same. If Petitioner fails to deposit costs within four weeks from today, then this petition shall be deemed to have been dismissed with costs of Rs.5,000/-.

8. Insofar, as the remaining two petitions are concerned, challenge is to order by which the Petitioner has been deprived opportunity of leading secondary evidence. According to the decision of this Court in ***Karthik Gangadhar Bhat V/s. Smt. Nirmala Namdeo Wagh, in Civil Writ Petition No. 11151 of 2017***, there is no necessity of filing any application to lead secondary evidence. Rather, it is for the witness / party to step into the witness box and to make out a case justifying to the production of secondary evidence. Admittedly, the evidence of the Petitioner is not closed, but it is continued. In any case, in terms of order made in the Writ Petition No. 13189 of 2017, the Petitioner has further opportunity of leading evidence.

9. Accordingly, the Petitioner is granted leave to adopt the course indicated in Karthik Bhat (supra). The learned Trial Judge to permit the Petitioner to proceed accordingly, without being influenced by any observations made in the impugned order in these two petitions.

10. All three petitions are disposed of in the aforesaid terms. Rule is disposed of in the aforesaid terms.

11. Considering the suit is of the year 1999, the learned Trial Judge is directed to dispose of the suit as expeditiously as possible, in any case, by 31.03.2020. The learned Counsel who appear for the parties assure the Court that they will co-operate with the learned Trial Judge in the matter of expeditious disposal of the suit.

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

(M.S.SONAK, J.)

This order is corrected in pursuance to the speaking of minutes order dated 23.04.2019.