

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13866 OF 2018

Rajesh K.Goyal	..Petitioner.
V/s.	
Vilas Pandharinath Pande & Ors.	..Respondents.

WRIT PETITION NO.13770 OF 2018

Rajesh K.Goyal	..Petitioner.
V/s.	
Bhikaji Bajirao Pawar & Ors.	..Respondents.

WRIT PETITION NO.1519 OF 2019

Vinik K.Goyal	..Petitioner.
V/s.	
Kaluram Pandurang Tope & Ors.	..Respondents.

Mr.J.S. Kapre for the petitioner.

Mr.Akshay A.Deshmukh for respondent Nos.1 to 3.

Mr.Mahesh V.Rawool I/b. Avinash B.Avhad for respondent No.9 ion WP/13886/2018.

CORAM : M.S.SONAK, J.

DATE : APRIL 15, 2019

P.C.:-

Heard Mr.Kapre, learned counsel for the petitioner No.9 and Mr.Deshmukh for respondent Nos.1 to 3. Mr.Rawool, learned counsel for respondent Nos.9 to 3.

2. Challenge in the petition is to the order dated October 15, 2018 by which learned trial Judge has dismissed the petitioner's application for appointment of Court Commissioner to cross examine the petitioner.

3. The application made by the petitioner and thereafter the institution of the present petition is gross abuse of judicial process. This is evident from the reasons for which the petitioner applied for appointment of Court Commissioner to examine himself in the suit or in the application seeking restoration of the suit.

4. In the aforesaid regard, a reference is required to be made to paragraph 2 of the impugned order which is similar in all the three petitions because this was the only ground on which the petitioner had applied for appointment of Court Commissioner. The paragraph 2 of the impugned order reads thus:-

“ It is contended on behalf of plaintiff that he has filed this application for restoration of original suit. He has filed his evidence affidavit and matter is fixed for cross-examination. He is permanent resident of Pune City. He is very busy businessman having various businesses in the State of Maharashtra. He has employed many persons in his business. He is required to earn huge amount for money for running his business. Due to his business commitments and other pre-occupations, he is unable to attend the Court on each and every date. Whenever he attends the court, the proceedings gets adjourned due to various reasons and due to which plaintiff

losses his working business hours. Unfortunately, business working hours of plaintiff and of Court overlapping and, therefore, losses his business. ”

5. The aforesaid means that the petitioner seeks appointment of Court Commissioner on the ground that he is a very busy businessman having various businesses in the State of Maharashtra. The petitioner has averred that he is required to earn huge amount of money by running his business and on account of his business demands, he is not able to attend the Court. These are frivolous reasons and the learned trial Judge was entirely right in dismissing the application but the learned trial Judge erred in imposing costs of only Rs.2,000/- while dismissing the said applications. Accordingly, these petitions are liable to be dismissed with costs of Rs.30,000/- in each of the petitions. However, Mr.Kapre, learned counsel for the petitioner submits that costs may be Rs.10,000/- in each of the petitions and the petitioner shall co-operate in progress of the suits.

6. Accordingly, these petitions are dismissed with costs of Rs.10,000/- in each of the three petitions. The petitioner will deposit these costs within a period of two weeks from today before the trial Court. Once the total costs of Rs.30,000/- are deposited within a period of two weeks from today before the learned trial Court, the defendants in the suit shall be at liberty to withdraw the same unconditionally.

7. If there is default in deposit of costs within a period of two weeks from today, then, these petitions shall be deemed to have been dismissed with costs of Rs.10.000/- in each of the petitions. In addition, further evidence of the petitioner will stand closed.

8.

All these petitions are dismissed with costs as aforesaid.

9. It is made clear that if on account of frivolous reasons, like the petitioner is required to attend his business and earn money, the petitioner fails to remain present and offer himself for cross-examination, the learned trial Judge is at liberty to make appropriate order of closing the evidence of the petitioner.

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

(M.S.SONAK, J.)