

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO. 3722 OF 2003

Shaikh Babu s/o Shaikh Raheman
Age – 47 years, Occu. - Agri.,
R/o – Varudi, Tq. Bhranpur,
District Khandva (M.P.)

.... Petitioners
(Orig. Defendant)

Versus

Tukaram s/o Deochand Mahajan
Age – 60 years, Occu- Agriculturist,
R/o – Aanturli, Tq. Edlabad,
District Jalgaon.

.... Respondent
(Orig. Plaintiff)

.....
Advocate for Petitioner : Mr. V. B. Patil
Advocate for Respondent-sole : Mr. A. B. Kale
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CORAM : V. K. JADHAV, J.
DATED : 07th FEBRUARY, 2020

JUDGMENT :-

1. The petitioner is the original defendant. The respondent/plaintiff has instituted the suit bearing Regular Civil Suit No. 44 of 2000 for recovery of amount of Rs.50,000/-. After completion of the evidence and on filing of pursis of closing evidence, the respondent/plaintiff filed an application Exhibit 27-A for permission to adduce additional oral and documentary evidence. The trial court allowed the said application subject to

costs of Rs.150/-. Hence this Writ Petition.

2. Learned counsel for the petitioner/original defendant submits that the application Exhibit 27-A is vague. There is nothing in the application to indicate as to what constrained the respondent/plaintiff to file the application for adducing additional oral and documentary evidence. Learned counsel submits that it has been simply stated in the application that the respondent/plaintiff wants to produce certain documents on record and therefore, in terms of those documents, the oral evidence is necessary. Learned counsel submits that there are no reasons in the application as to why the documents, though not referred in the application, intended to be produced before the court belatedly and as to why they were not produced on the earlier occasion. The trial court has allowed the application erroneously. The impugned order is thus liable to be quashed and set aside.

3. Learned counsel for the respondent submits that even though the respondent/plaintiff has filed a “close evidence” pursis, after the false evidence lead by the petitioner/defendant, it was necessary for the respondent/plaintiff to adduce oral and

documentary evidence in rebuttal. Learned Judge of the trial court has therefore rightly allowed the application Exhibit 27-A. No interference is required. The Writ Petition is liable to be dismissed.

4. On careful perusal of the contents of the application Exhibit 27-A, I find no reasons in the application as to why the application came to be filed at the stage when the defendant's evidence was over. The respondent/plaintiff is not supposed to fill up the lacuna by adducing oral and documentary evidence after the evidence of the petitioner/defendant is over. However, under some exceptional circumstances, the same can be permitted. On careful perusal of the contents of the application Exhibit 27-A, it appears that vague reference has been given to certain documents. However, neither those documents are referred in the application, nor produced along with the application Exhibit 27-A. It is also not clear as to what prevented the respondent/plaintiff to produce those documents on the earlier occasion and as to why he did not adduce any evidence in respect of those documents on the earlier occasion. On perusal of the impugned order, it appears that the trial court has given one more opportunity to the respondent/plaintiff without any basis. Learned Judge of the trial court has also concluded that

if one opportunity is given to the respondent/plaintiff, no prejudice will be caused to the petitioner/defendant. However, the trial court has not even bothered to refer those documents and the reasons for production of those documents belatedly. In view of the same, the order impugned is not sustainable. The suit is of the year 2000. Due to the interim order passed by this Court, the further proceedings in the suit are stayed since 16.06.2004. In view of the same, certain directions are required to be given to the trial court to dispose off the suit expeditiously in a time-bound manner. Hence, the following order:

ORDER

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 05.04.2003 passed by Civil Judge, Junior Division, Muktainagar below Exhibit 27-A in Regular Civil Suit No. 44 of 2000 is hereby quashed and set aside.
- III. The application Exhibit 27-A is hereby rejected.
- IV. The trial court is hereby directed to dispose off the suit as expeditiously as possible, preferably within a period of six months from the date of this order.

V. The Writ Petition is accordingly disposed off. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

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