

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO. 4896 OF 2007

SATISH BABASAHEB KAWADE AND OTHERS
VERSUS
SUNANDA ANKUSH CHOUDHARI AND ANOTHER

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Advocate for Respondent No.1 : Mr. B. A. Dhengle.
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CORAM : V. K. JADHAV, J.
DATED : 14th FEBRUARY, 2020

PER COURT:-

1. None present for the petitioners. However, the learned counsel for the respondent / original plaintiff submits that the suit bearing RCS No. 115/1998 is still pending before the Civil Judge, Junior Division, Bhoom, District Osmanabad, and recently the parties have arrived at an amicable settlement and the terms of compromise are reduced into writing and placed before the Trial Court. However, while granting Rule, this Court has continued the interim relief as granted by the order dated 24.09.2007 and in view of the same, the further proceedings in the suit bearing RCS No. 115/1998 are stayed.

2. Apart from this, I find no merit in this Writ Petition. It appears that the issues were framed at Exhibit 77 on 01.11.2000 and the suit was posted on 11.12.2000 for filing the list of witnesses. The application Exhibit 78 filed by the defendant seeking time for filing list of witnesses came to be rejected and the matter was posted for evidence. It has been observed by the Trial Court in the impugned order that since then the matter came to be adjourned time to time. As per the order passed below Exhibits 79 and 80 dated 19.06.2001, the defendants were directed to lead their evidence at first. Since then defendants sought so many adjournments and on 11.10.2006, filed an affidavit of defendant No. 1 by way of examination-in-chief at Exhibit 117 as stated by the Trial Court in the impugned order. It further appears from the order passed by the Trial Court below Exhibit 120 that the defendants have not applied for issuing witness summons to the remaining witnesses and the matter was then adjourned till 17.03.2007. On 17.03.2007, the petitioners / defendants filed an application Exhibit 120 including list of seven witnesses for issuing summons to them. In terms of the provisions of Order XVI Rule 1 sub - rule (3) of C.P.C., the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or

otherwise, any witness, other than those whose names appear in the list referred to in sub - rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

3. In terms of the Order XVI Rule 1-A, subject to the provisions of sub - rule (3) of Rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.

4. In the instant case, the petitioners / defendants neither filed any list of witnesses nor kept those witnesses present on their own for their examination. Even though the Trial Court has rejected the application Exhibit 78 on earlier occasion for the same relief, the petitioners / defendants after laps of six years filed the application Exhibit 120. Learned Judge of the Trial Court has therefore rightly rejected the application Exhibit 120. I find no fault in the order passed by the Trial Court. There is no substance in the Writ Petition. Otherwise also, as pointed out by the learned counsel for the respondent / original plaintiff, the parties have arrived at an amicable settlement and the terms of compromise are now reduced

in writing and the compromise has now been placed before the Trial Court. I find no reason at all to interfere in the impugned order passed by the Trial Court below Exhibit 120 in RCS 115/1998. Hence, the Writ Petition is hereby dismissed. Rule discharged.

(V. K. JADHAV, J.)

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