

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO. 7982 OF 2005
WITH
CIVIL APPLICATION NO. 6372 OF 2010
IN WP/7982/2005

Gautam Milks Pvt. Ltd.
Gautam Nagar, Post. Kolpewadi,
Tq. Kopargaon, Dist. Ahmednagar
through Shri. V. B. Kapadnis,
Age : 52 years, Occ. : Service,
R/o as above.

... Petitioner
(Orig. Plaintiff)

Versus

1. Mahaganga Dairy Pvt. Ltd.,
11/12, Mahakali Gunfa Road,
Giriram Industrial Estate,
Andheri (East), Mumbai – 400093.
2. The Chairman,
Shri Nadar,
Age : 55 years, Occ : Business,
R/o Mahaganga Dairy Pvt. Ltd.,
11/12. Mahakali Gunfa Road,
Giriram Industrial Estate,
Andheri (East), Mumbai – 400093.
3. Shri Kotnis,
Age : 50 years, Occu : General Manager
of Mahaganga Dairy Pvt. Ltd.,
11/12, Mahakali Gunfa Road,
Giriram Industrial Estate,
Andheri (East), Mumbai – 400093.

... Respondents
(Orig. Defendants)

.....
Mr. R. L. Kute, Advocate for the Petitioner
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CORAM : V. K. JADHAV, J.
DATED : 31st JANUARY, 2020

JUDGMENT :-

1. None appears for the respondents though duly served.
2. Heard learned counsel for the petitioner.
3. The petitioner is the original plaintiff. The petitioner/plaintiff has instituted the suit bearing Special Civil Suit No. 143 of 1997 for recovery of amount. As per Exhibit 29, issues came to be framed by order dated 30.04.2002. In terms of those issues, both the parties adduced oral and documentary evidence in support of their rival contentions and after their evidence was over, the trial court by order dated 08.09.2005 recasted the issues. Consequently, the petitioner/plaintiff filed an application Exhibit 207 for issuing summons to four witnesses. Though the respondents/defendants have strongly resisted the said application, by order dated 26.09.2005, the trial court allowed the petitioner/plaintiff to lead evidence and accordingly directed to issue witness summons as prayed in the application Exhibit 207. Thereafter, the petitioner/plaintiff filed an application Exhibit 212 under Order XVIII Rule 4 of the Code of Civil Procedure, 1908 for permission to

lead evidence by way of affidavit. The respondents/defendants resisted the said application by filing say. However, by order dated 15.10.2005, the trial court has allowed the application Exhibit 212 subject to costs of Rs.200/- and further directed the petitioner/plaintiff to file an affidavit of its witnesses in English language on the additional issues. However, by filing application Exhibit 215, the respondents/defendants raised objection to the effect that the petitioner/plaintiff is trying to give evidence on facts extraneous to additional issue of jurisdiction and the affidavit of the witnesses filed to that effect should not be accepted. The petitioner/plaintiff strongly resisted the said application. By the impugned order dated 18.10.2005 passed below Exhibit 215, the trial court has observed that the plaintiff has liberty to lead additional evidence on the additional issue of jurisdiction only and accordingly directed the petitioner/plaintiff to lead evidence of its witnesses on affidavit to the extent of jurisdiction only and not on entire issues.

4. Learned counsel for the petitioner/plaintiff submits that the impugned order is contrary to the order dated 26.09.2005 passed below Exhibit 207 and the order subsequent thereto.

5. I have carefully gone through the order passed below Exhibit 207. It appears that after recasting of issues, the petitioner/plaintiff has filed application Exhibit 207 specifically stating therein that since the issues are recasted, it would be just and appropriate to permit the petitioner/plaintiff to give additional evidence. Though the application was opposed by the respondents/defendants, the trial court has passed the order on 26.09.2005 which reads as under:

“Read the application and say of defendants. Heard both sides. No doubt the issue of jurisdiction is framed in recasting issues. Therefore considering the contents of application and as well as in the interest of justice application is allowed and issue witness summons as prayed on payment of P.F.”

6. It appears that the trial court has given reference to the recasting of issues and also given specific reference to the issue of jurisdiction. However, the trial court nowhere stated in the said order that the petitioner/plaintiff is permitted to lead additional evidence to the extent of issue of jurisdiction only and not beyond

that. In view of the above, the impugned order is liable to be quashed and set aside. Since the suit is pending from the year 1997, it would be appropriate if the trial court is directed to dispose off the suit as expeditiously as possible in a time-bound manner. So far as the order passed below Exhibit 212 dated 15.10.2005 is concerned, clause (2) of the operative part of the order is also contrary to the earlier order passed below Exhibit 207 dated 26.09.2005. The same is thus required to be modified to the extent that the plaintiff is permitted to file an affidavit of its witnesses in English language on all the recasted issues. Hence, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby partly allowed.
- II. The impugned order dated 18.10.2005 passed below Exhibit 215 in Special Civil Suit No. 143 of 1997 is hereby quashed and set aside.
- III. The application Exhibit 215 stands rejected.

IV. The order dated 15.10.2005 passed below Exhibit 212 is modified to the extent of clause (2) of the operative order as under:

“Plaintiff is hereby directed to file affidavit of its witnesses in English language on all recasted issues.”

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

VI. Civil Application No. 6372 of 2010 also stands disposed off.

(V. K. JADHAV, J.)

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