

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2900 OF 2018

Shri Ajay Arvind Joshi ... Petitioner.

V/s

Shri Dipak Raj Sood and Ors. ... Respondents.

Mr. Ketan Joshi i/b ERGO Juris for the Petitioner.

Mr. D. J. Bhanage for Respondent Nos.2 and 3.

CORAM : A. S. GADKARI, J.
DATE : 12th MARCH, 2020

P. C. :

1. By the present Petition under Article 227 of the Constitution of India, the petitioner/original plaintiff has impugned interlocutory Order dated 30th November 2017 passed below Exhibit-63 in Special Civil Suit No. 2251 of 2009, thereby allowing application filed by the defendants for recalling of witness namely Smt. Rupa Dipak Sood.

2. Heard Mr. Joshi, learned counsel for the petitioner and Mr. Bhanage, learned counsel for the respondent Nos.2 and 3. Perused the entire record annexed to the Petition.

3. The record indicates that, the petitioner/original plaintiff has filed the aforestated Special Civil Suit No. 2251 of 2009 for declaration that, the termination letter of the petitioner dated 24th December 2009 issued by the respondents is illegal, unjustified, improper and bad-in-law and not binding on the petitioner and for damages and/or for monitory benefits to

the tune of Rs.41,50,000/- and for other consequential reliefs.

4. In the said suit, the recording of evidence of petitioner is already completed. The petitioner/original plaintiff, thereafter, filed an application below Exhibit-56 for examination of witness namely Mrs. Rupa Dipak Sood. The Trial Court, thereafter, issued witness summons to the said witness.

5. The record further indicates that, Mrs. Rupa Dipak Sood appeared and filed an application below Exhibit-62, stating therein that, she is not a relevant witness; she has nothing to do with the affairs of respondent Nos.2 and 3/original defendant Nos. 2 & 3 and the concerned relevant witnesses would be Mr. R. Subramaniam. She has also given detail address of the said witness namely Mr. R. Subramaniam. The respondents also filed an application below Exhibit-63 for setting aside the Order dated 21st November 2015 thereby issuing witness summons to Ms. Rupa Dipak Sood and recalling the said witness.

6. The plaintiff therefore filed application under Section 75 of the Code of Civil Procedure for examination of said witness namely Ms. Rupa Dipak Sood by appointing a Court Commissioner. The Trial Court has rejected the prayer of petitioner and has allowed the application preferred by the defendants below Exhibit-63.

7. It is to be noted here that, in their application filed below Exhibit-63 for recalling of the said witness namely Ms. Rupa Dipak Sood, a categorical averment is made that, the said witness is aged about 67 years

and she being wife of respondent No.1/defendant No.1, only to view to cause harassment to the respondent No.1/defendant No.1 and to the said witness, the said application, calling for the witness, was filed. I find substance in the said contention.

It is the contention of the petitioner that, the said Smt. Rupa Dipak Sood was Director of Samalku Forgings Private Limited and in the said Company the respondent No.1/defendant No.1 was also Directors. It is to be noted here that, the said Company is not a party to the said Suit and the intention behind calling upon the said witness Rupa Dipak Sood appears to be, to cause undue harassment to her by the petitioner/plaintiff for the reasons best known to him only.

8. Perusal of record would further indicate that, the said witness namely Mrs. Rupa Dipak Sood is neither relevant or necessary witness for adjudication of the claim of the plaintiff in the said suit. The Trial Court has taken into consideration the said various aspects and has passed the impugned Order. Perusal of impugned Order would indicate that, the same is a judicious Order without any error in it.

As noted earlier, even otherwise the said impugned Order is purely interlocutory in nature and therefore the inference by this court under Article 227 of the Constitution of India is unwarranted therein.

The Petition being dehors of merits is accordingly rejected.

(A. S. GADKARI, J.)