

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10450 OF 2019

Rohan Builders and Developers Pvt. Ltd. Erstwhile M/s. Rohan Builders and Developers	...Petitioner
Versus	
Trinity Town Development and Finance Pvt. Ltd. and Ors.	...Respondents

Ms. Manjiri S. Parasnis, for the Petitioner.

Mr. Chaitanya Bhandarkar, for the Respondent Nos.1 and 3 to 7.

CORAM : REVATI MOHITE DERE, J.

DATE : 12th FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the orders dated 7th September, 2019, passed by the learned 10th Joint Civil Judge, Senior Division, Pune, below Exhibit – 111, as well as below Exhibit – 5 and Exhibit – 1, in Special Civil Suit No. 12 of 2017 (old Special Civil Suit No.1503 of 2011).
3. Learned Counsel for the petitioner submits that the learned

Judge ought not to have dismissed the petitioner's suit for default in the peculiar facts. She submits that it is not a case where the petitioner was continuously seeking adjournment. She submits that the petitioner had sought adjournment on 14th November, 2018, 6th July, 2019 and 14th August, 2019. Learned Counsel for the petitioner, on instructions of the petitioner submits that the petitioner will not seek any adjournment before the trial Court, except in exceptional circumstances and that the petitioner will proceed with the trial on the dates given by the trial Court.

4. Learned Counsel for the Respondent Nos.1 and 3 to 7 vehemently opposed the petition. He submits that no interference is warranted in the impugned orders. According to the learned counsel for the Respondent Nos.1 and 3 to 7, the petitioner is continuously filing adjournment applications in the trial Court, as a result of which, the learned Judge rightly dismissed the petitioner's suit for default.

5. Perused the papers. The petitioner is the original plaintiff who had filed the aforesaid suit being Special Civil Suit No. 12 of 2017 (old Special Civil Suit No.1503 of 2011) as against the respondents (defendants) *inter alia* for declaration that the Sale Deeds dated 13th January, 2011 executed by the Respondent No.6, as alleged Director of Respondent No.1

in favour of Respondent No.3, was illegal and bad in law. The respondent nos.1 and 2 appeared in the said suit and filed their written statement. It appears that the matter was posted for filing petitioner's affidavit of evidence, however, the petitioner filed an application (Exhibit – 111) and sought an adjournment, on the ground, that the Director – Sanjay Lunkad, of the Petitioner company was unwell and as such was unable to attend the Court. It was stated that due to non-availability of his signature on the affidavit of evidence, time be granted. The said application was filed on 7th September, 2019. The trial Court vide order dated 7th September, 2019 rejected the said application. The said order is on page 82 of the petition. Thereafter, the trial Court proceeded to dismiss the suit for default on the very same day and passed an order below Exhibit – 1. The said order is on page 83 of the petition. In the said order the learned Judge observed that a number of adjournments were sought by the petitioner and as such dismissed the suit for default on 7th September, 2019. Again on the same day, the trial Court passed another order below Exhibit – 5, wherein it was stated that in view of the order of dismissal of the suit, and in consequence of the same, the order dated 18/07/2018 passed on application for temporary injunction, stands vacated. The said order is on page 84 of the petition.

6. Learned Counsel for the petitioner submits that the petitioner will not seek any adjournment, except in exceptional circumstances and will co-operate in the conduct of the trial, which is pending since 2011. She submits that the petitioner will be put to tremendous hardships, if the said suit is not restored back to its original file. She states that the affidavit of evidence will be filed in the trial Court on the next date.

7. *Prima facie*, it appears that the trial Court rejected the application for adjournments having regard to the conduct of the petitioner in seeking several adjournments and as such dismissed the suit for default. However, having regard to the statement made by the learned counsel for the petitioner, that they will not impede the trial and proceed with the case and will not seek any adjournments, except in exceptional circumstances, the impugned orders all dated 7th September, 2019, passed by the learned 10th Joint Civil Judge, Senior Division, Pune, below Exhibit – 111, as well as below Exhibit – 5 and Exhibit – 1, in Special Civil Suit No. 12 of 2017 (old Special Civil Suit No.1503 of 2011), are quashed and set aside, subject to the petitioner paying a total cost of Rs.1,00,000/- to the Respondent Nos.1 and 3 to 7. The said costs to be paid to the said Respondents, within two weeks from today.

8. The Suit is restored back to its original file along with the interim orders passed by the trial Court. Since the suit is of the year 2011, the hearing of the suit is expedited. All parties to co-operate in the conduct of the suit. The parties to appear before the trial Court on **2nd March, 2020 at 10.30 a.m.**, after which, the learned Judge will give dates convenient to the Court.

9. The Petition is allowed in the aforesaid terms and is accordingly disposed of.

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

REVATI MOHITE DERE, J.