

nsc.

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

WRIT PETITION NO. 1171 OF 2020

Madhav Vishwanath Labhade and Ors. ... Petitioners
Versus
Ramesh Gangadhar Kavade and Ors. ... Respondents

Mr. R. N. Gite, for the Petitioners.

Mr. G. R. Agrawal, for the Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 12th FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioners have impugned the order dated 17th August, 2019, passed by the learned Civil Judge, Junior Division, Yeola (Nashik), below Exhibit – 63 in Regular Civil Suit No.155 of 2013, by which, the petitioners' application for setting aside the order by which the petitioners evidence, was closed, was rejected.
3. Learned Counsel for the petitioners submitted that the observations made by the trial Judge that the application filed by the

petitioners under Order XVI Rule 1-A, is bereft of details and does not mention the names of the witnesses, is contrary to the legal position. Learned Counsel relied on the Judgment of the Apex Court in the case of ***Mange Ram v/s Brij Mohan and Others***¹, in support of the said submission. He further submitted that the earlier application was filed under Order XVI Rule 1 and the present application was filed under Order XVI Rule 1-A and as such the trial Court ought not to have been influenced by the earlier rejection of the petitioners' application under Order XVI Rule 1, which was confirmed by this Court. He submitted that the petitioners are in possession of the suit premises for the last 50 years and as such if the petitioners are not permitted to lead their evidence, serious prejudice will be caused to them.

4. Learned Counsel for the Respondent No.1 opposed the petition. He submits that no interference is warranted in the impugned order. Learned Counsel relied on following Judgments; ***Lalitha J. Rai v/s Aithappa Rai***²; ***Anju Toshniwal and Others v/s Expat Properties India Ltd***,³; and ***Sanjay Sham Bagade and Another v/s Ramesh Hari Madan and Others***⁴; in support of his submission.

1 (1983) 4 SCC 36

2 (1995) 4 SCC 244

3 2020(1) ALL MR 691

4 2014 (5) Mh.L.J. 321

5. Perused the papers including the impugned order. The Respondents are the original plaintiffs who have filed Regular Civil Suit No.155 of 2013 as against the Petitioners (original defendants), for declaration, possession and for mesne profit. The Petitioners (original defendants) appeared in the said suit and filed their written statement. The trial Court framed issues on 6th February, 2014 and thereafter on 27th August, 2015, additional issues were framed. Thereafter, the respondent – plaintiffs stepped in the witness-box and the respondents – plaintiffs closed their evidence. One of the witness i.e. Subhash Labhade i.e. the petitioner no.2 stepped in the witness-box and he was examined as the petitioners (defendants) witness. Affidavit-in-evidence was filed by the said witness in the year 2016. After the evidence of the said witness was over, on 14th March, 2018, the petitioners filed an application being Exhibit – 53, setting out the names of six witnesses and prayed for issuance of witness summons. The trial Court vide order dated 18th August, 2018, rejected the petitioners application for issuing witness summons to the said six witnesses. Being aggrieved by the said order dated 18th August, 2018, the petitioners filed writ petition in this Court being Writ Petition (Stamp) No.28259 of 2018. This Court vide order dated 22nd January, 2019, rejected the said writ petition by a detailed order. The said order is on page 25 of the said petition. This Court whilst rejecting the aforesaid writ petition

observed that the petitioners had failed to comply with the provisions of Order XVI Rule 1 of Civil Procedure Code. It was observed that the petitioners had filed their list of witnesses in the year 2018, whereas the issues were framed on 27th August, 2015. It was also observed that the petitioners had failed to explain why the said witnesses were proposed to be examined. This Court after observing that the petitioners had failed to comply with the provisions of Order XVI Rule 1 of Civil Procedure Code and having regard to the Judgment of the Apex Court in the case of ***Kokkanda B. Poondacha and Others v/s. K. D. Ganapathi and Another***⁵, rejected the petitioners said writ petition.

6. It appears that after the petitioners evidence was closed, the petitioners filed an application (Exhibit – 63) and sought setting aside of the order closing the evidence against them. The learned trial Court vide order dated 17th August, 2019, was pleased to reject the said application. A perusal of the application (Exhibit – 63) does not show when the order closing the evidence of the petitioners was passed and it is bereft of any details. It also does not mention under which provision of law the said application (Exhibit – 63) is filed. All that it says is that the order closing the evidence of the petitioners be set aside and they may be permitted to

5 2011 ALL SCR 971

lead further evidence by examining witnesses. As noted earlier, the petitioners have examined petitioner no.2 (original defendant) as their witness. It is also pertinent to note that the earlier application for issuing witness summons to the six witnesses, was rejected by the trial Court and confirmed by this Court. It is pertinent to note that the plaintiffs evidence was closed in 2016 and that the matter was posted for recording the evidence of the petitioners (defendants). The petitioners (defendants) examined only one witness in the year 2016 and it is only in 2018 that they filed an application for issuing witness summons to the witnesses whose names were mentioned in the application. From the impugned order, it appears that during this period the petitioners (defendants) also filed an application seeking amendment of their written statement, which was rejected by the trial Court. It also appears that the matter was adjourned on several dates and sufficient opportunity was granted to the petitioners (defendants) to adduce their evidence. It appears that despite being given sufficient opportunity the petitioners (defendants) failed to adduce their evidence. No doubt, the Judgment of the Apex Court shows that no details are required to be given in the application, as to why the said witnesses are to be examined, however, the fact remains that in the earlier round of litigation the prayer for examining additional witnesses was rejected. The conduct of the petitioners (defendants) will also have to be considered.

7. Having regard to what is stated aforesaid, no infirmity can be found in the impugned order dated 17th August, 2019, passed by the learned Civil Judge, Junior Division, Yeola (Nashik), below Exhibit – 63 in Regular Civil Suit No.155 of 2013.

8. Accordingly, the petition is dismissed. The learned Judge to proceed with the case, on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.