

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 12264 OF 2019**

M/S. Johnson Dye Works Private Ltd.

.....Petitioners

Vs.

Ratanchand Navlachand Jhaveri
And Tarachand Navanchand Jhaveri
(Both Decd.) Through LRs.

.....Respondents.

Mr. Mukesh Vashi a/w Smt. Prachi Khandge i/by M/s. M.P Vashi & Associates for the Petitioners.

Ms. Jheel Mehta a/w Mr. Devansh Bheda i/by M/s. Purnanand & Co for the Respondent No.5.

CORAM : A. S. GADKARI, J.

DATE : 6th MARCH, 2020.

PC:-

By the present Petition, the Petitioners/Original Plaintiffs have impugned Order dated 2nd November, 2019 passed below Exhibit-10 in T.E. Suit No. 185 of 2018, by the learned Judge of Small Causes Court at Mumbai, rejecting the said Application for expediting hearing of the said Suit on the ground that, the Defendant Nos. 2, 3 and 8 are senior citizens.

2 Heard Mr. Vashi, learned counsel for the Petitioners and Ms. Jheel Mehta learned counsel for the Respondent No.5. Perused the record.

3 The Petitioners had filed the aforestated Application below Exhibit-10 for expediting hearing of the said Suit on the basis of a circular issued by this Court dated 3rd August, 2009 and on the ground that, the

Defendant Nos. 2, 3 and 8 are senior citizens.

As noted earlier, the Trial Court has rejected the said Application.

4 Learned counsel appearing for the Respondents vehemently opposed the Petition and submitted that, there are two other Suits which are pending for adjudication between the Petitioners and the Respondents and the Suit which is filed in the year 2018 will be given preference, if the Application filed by the Petitioners will be allowed.

She further submitted that, in view of the said Circular dated 3rd August, 2009, it was for the concerned Senior Citizen to file an Application and in the present case, the said Defendant Nos. 2, 3 and 8 have not filed the said Application. She further submitted that, it is the Petitioner who has filed the present Application below Exhibit-10 which cannot be considered and the Trial Court therefore, has passed right and proper Order, rejecting the said Application.

She therefore, prayed that, the present Petition may be dismissed, summarily.

5 Paragraph No.2 of the said Circular dated 3rd August, 2009 reads as under:-

“The Hon’ble the Chief Justice and Judges after reconsidering the issue, have now directed that precedence be given by the Courts for hearing and

final disposal of the cases wherein one of the parties has attained the age of sixty years or above. However, the Courts may grant such indulgence on written request made in that behalf.”

6 A bare perusal of the said paragraph would clearly indicate that, there is no caveat in the said paragraph as to who shall file an Application for early hearing or expediting the matter. It is only stated that, the precedence be given by the Courts for hearing and final disposal of the cases wherein one of the parties has attained the age of sixty years or above. The said circular is issued for benefit of a particular class of Citizens who are aged about 60 years and above.

7 Narrow interpretation of the same as has been canvased by the learned counsel for the Respondents, will have frustrating effect in issuing the said Circular. In my considered opinion, the expansive meaning and liberal construction has to be applied while interpreting and/or reading paragraph No.2 of the said Circular.

8 The Respondent No. 2 has filed Affidavit dated 6th March, 2020 in opposition of the present Petition, wherein, on oath, he has stated his age as 71 years. There is no dispute about the fact that, the Original Defendant Nos. 3 and 8 are also Senior Citizens.

 The approach adopted by the learned counsel for the Respondents indicates that, the Respondents-Original Defendants, intends

to procrastinate the hearing of the said Suit, being tenants in the suit property.

9 In view of the above, I find that, the impugned Order is not tenable in the eyes of law and is accordingly quashed and set aside.

Learned Judge of the Small Causes Court, seized of T.E. Suit No. 185 of 2018 is directed to expedite the said Suit.

The Trial Court is further directed to list the said Suit under the caption of "*Senior Citizens*" and give priority to it, as per his roster.

10 Registrar Judicial-I, is hereby directed to place the present Order along with Circular dated 3rd August, 2009 before the Administrative Committee of this Court, for necessary amendments, if it finds necessary, in view of the submissions of the learned counsel for the Respondents recorded herein above.

Writ Petition is accordingly allowed, in the aforesaid terms.

Sanjiv S.
Mashalkar

Digitally signed
by Sanjiv S.
Mashalkar
Date:
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(A.S. GADKARI, J.)