

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.7801 OF 2019

(Rahul Prafulkumar Kejdiwal Vs. Anand Govind Patil and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Alok Daga, Advocate for Petitioner.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 4th JANUARY, 2020.

1] The petitioner original defendant is aggrieved by the order dated 28.06.2019 and 01.10.2019 passed by the trial court below Exh.1 and Exh.82, respectively in Special Civil Suit No.503/2005.

2] Despite service of court notice on all the respondents, none have chosen to cause an appearance either in person or through an Advocate.

3] I have considered the strenuous submissions of the learned Advocate for the petitioner and have considered the four grounds formulated by him in the memo of the petition.

4] The record reveals that the plaintiff witness no.5 was examined on 07.02.2019. On that date, the petitioner defendant failed to cross-examine him. The witness was therefore, discharged and the matter proceeded without cross-examination.

5] An application Exh.78 was filed on 07.02.2019 praying for setting aside the 'no cross' order and for

recalling plaintiff witness no.5. The application was allowed on 23.04.2019 and permission to cross-examine the witness was granted to the petitioner. The petitioner was merely directed by the trial court to pay the process fee since the witness had to be recalled. It is informed that the process fee is about Rs.5/-.

6] Instead of depositing the process fees, the petitioner preferred another application Exh.82 making an issue about the direction to pay the court fees and contended that the plaintiff should be directed to produce the witness. The said application was rejected by the impugned order dated 01.10.2019 and the trial court noted that the petitioner can deposit the court fees towards the issuance of witness summons and thereafter cross-examine the said witness.

7] The learned counsel for the petitioner contends that the petitioner has an apprehension that if the witness does not appear, an adverse inference would be drawn against the petitioner – defendant. It is also canvassed that the petitioner is placed under the obligation to ensure the presence of the said witness.

8] I find that the contention of the petitioner is not only fallacious, but is vexatious. The suit is of 2005. The fifth witness of the plaintiff is being examined after 14 years. The trial court has not cast the burden of producing the said witness on the defendant. Merely because the defendant is directed to pay the process fee of Rs.5/- since the defendant had failed to cross-examine the said witness,

an issue is now being created out of nothing.

9] Considering the above, I am of the view that this petition is an example of frivolous litigation. A suit of 2005 has been delayed practically for about seven months on the above stated issue. This petition is therefore, dismissed by imposing costs of Rs.10,000/- which the petitioner shall deposit before the trial court in Special Civil Suit No.503/2005, on or before 01.02.2020, failing which the petitioner would lose his right to cross-examine the plaintiff witness no.5 and the trial court would proceed with the suit expeditiously.

10] The above stated amount to be deposited by the petitioner, original defendant, shall be donated to the Legal Aid Services Authority of the District Court since none of the plaintiffs have caused an appearance in the proceedings in this court.

11] Since Special Civil Suit No.503/2005 is pending adjudication for 14 years, the trial court shall give priority to the said suit and shall decide the said suit expeditiously and in any case on or before 31.08.2020. Adjournments on frivolous grounds shall be refused.

(Ravindra V. Ghuge, J.)