

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO.3923 OF 2022

SAMBHAJI SARJERAO JATHAR AND ANOTHER
VERSUS
BALASAHEB SARJERAO JATHAR AND OTHERS

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Advocate for Petitioners : Mr Hemant UDhage
Advocate for Respondent No. 1 : Ms Manjushri V. Narwade h/f
Mr V.P. Narwade

CORAM : SANDEEP V. MARNE, J.
DATE : 2nd DECEMBER, 2022

PER COURT :

1. Petitioner assails order dated 3rd March, 2022 by which the trial court has refused to recall order of evidence closure in respect of defendant Nos. 3 and 5 dated 17th March, 2021
2. The petition is resisted by the counsel appearing for respondent No.1/plaintiff submitting that previously similar evidence closure order was passed against the defendant No.1 which was later recalled. She would submit that defendant Nos. 3 and 5 thereafter have delayed the trial of the suit by not filing their evidence. Even though "No evidence" order was passed on 17th March, 2021, petitioners took time of nine months in moving the application for recalling the order.
3. Petitioners' counsel submits that Covid-19 pandemic situation was prevalent on 17.03.2021 when no evidence order was passed, on account of which petitioners could not notice the same as the normal functioning of the court was disturbed.

4. No doubt, petitioners appear to be extremely casual in the manner in which the suit is defended. The suit is of the year 2013. Plaintiffs evidence has been recorded in the year 2018 itself. In these circumstances, no fault can be found in the order of the trial court in passing the order dated 03.03.2022. However, only on account of the fact that the pandemic situation was prevalent at the relevant time and no evidence order was passed on 17th March, 2021, I am of the view that another indulgence is required to be shown in favour of petitioners by appropriately compensating the respondent No.1/plaintiff.

5. Accordingly, petition succeeds. The order dated 03.03.2022 is set aside. Petitioners are granted an opportunity to lead evidence by filing their affidavit of evidence within a period of four weeks from today. Petitioners to pay costs of Rs. 10,000/- to respondent No.1/plaintiff within a period of four weeks from today. The costs may be deposited in the trial court with liberty to respondent No. 1 to withdraw the same. Needless to state that failure to pay costs within the stipulated period of time would result in 'No revival of Evidence' order dated 03.03.2022.

6. With the above observations, the writ petition is disposed of.

7. Hearing of the suit is expedited.

[SANDEEP V. MARNE, J.]

mta