

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6003 OF 2021

Julalsingh Bhika Pardeshi

... Petitioner
(Orig. Defendant No.3)

Versus

Pratapsingh Bhagwan Pardeshi & Ors.

... Respondents

...
Mr. S. G. Chapalgaonkar, Advocate for the Petitioner
Smt. Manjushri Narwade, Advocate for Respondent No.1
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 12th August, 2022

PER COURT :-

1. This petition filed under Article 227 of the Constitution of India, is directed against the order dated 03-02-2020, passed by the learned Civil Judge, Junior Division, Jamner, below Exhibit-328 in Regular Civil Suit No.63/1992.
2. The petitioner is original defendant no.3 in the suit filed by respondent no.1/original plaintiff for partition and separate possession.
3. The suit was resisted by filing written statement by the petitioner and original defendants no.3, 4, 6 & 7. The defendants

nos.3, 4, 6 & 7 admitted relationship between the parties, however, denied rest of the claim. They claimed that the plaintiff has got his share in partition in the year 1967.

4. The plaintiff/respondent no.1 filed his evidence affidavit on 01-12-2016. Since he was not available for cross-examination, the trial was protracted and his cross-examination was concluded on 25-06-2019. Thereafter, some of the defendants led their evidence and the defendants, who led evidence filed evidence closure pursis.

5. Thereafter, the petitioner filed an application (Exhibit-328) on 14-01-2020, contending that he was out of station in pursuance of his employment as an agricultural labour and therefore, he could not give his evidence. He, therefore, prayed that he may be permitted to lead evidence. The plaintiff gave no objection on this application. However, the Trial Court has rejected this application. Hence, the present petition.

6. Heard the learned Advocate for the petitioner and the learned Advocate for respondent no.1.

7. On going through the impugned order, it appears that, the Trial Court has rejected the application merely on the ground that, there was no cross-examination of plaintiff on behalf of petitioner/defendant no.3. No question in his defence was asked by

the learned Advocate to the plaintiff. The application is belatedly filed when the suit was fixed for final arguments. There is negligence on the part of the petitioner and therefore, the Trial Court rejected the application.

8. Admittedly, evidence of the plaintiff is concluded on 25-06-2019. Thereafter, the other defendants have led their evidence and filed evidence closure pursis. In that view of the matter, it cannot be said that the application was belatedly filed by the petitioner. The Trial Court has failed to give reasonable and fair opportunity to the petitioner to lead evidence and to prove his case on merits by rejecting the application. The ground given by the petitioner that being agricultural labour, he was out of station, is acceptable. This Court is of the considered view that reasonable and fair opportunity to defend his case is required to be given to the petitioner.

9. The learned Advocate for respondent no.1 supported the impugned order by placing reliance on **Dileep Nevatia Vs. State Bank of India** reported in **2015 (5) Mh.LJ 1015**. In the said case, Coordinate Bench of this Court was considering the fact that the advocate had submitted a compilation of judgment and notes of arguments, which were all irrelevant to the issue at hand. In that view of the matter, this Court refused to reopen the evidence, which was long closed.

10. Such are not facts of the present case. Hence, this judgment does not assist the respondent's case.

11. In light of the above, the following order is passed;

ORDER

(a) The writ petition is allowed in terms of prayer clause - 'B'.

(b) The impugned order dated 03-02-2020 passed by the Civil Judge, Junior Division, Jamner, District Jalgaon below Exhibit 328 in Regular Civil Suit No.63/1992, is hereby quashed and set aside.

(c) The Trial Court is directed to accept the evidence affidavit tendered by the petitioner along with application (Exhibit-328). The cross-examination of the petitioner shall be completed within a period of four weeks from the date of receipt of this order.

(d) An amount of Rs.15000/- deposited by the petitioner in this petition shall be transferred to the Trial Court and the plaintiff and other defendants are entitled to receive the same in equal share.

[NITIN B. SURYAWANSHI, J.]