

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10343 OF 2019

Ratan Shankar Sapkale

...Petitioner
[Orig. Plaintiff]

VERSUS

Mangal Anil Bhamre and Others

...Respondents
[Orig. Defendants]

.....
Mr. Vijay B. Patil, Advocate for the petitioner.
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th AUGUST, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the 4th Joint Civil Judge, Senior Division, Dhule, below Exhibit-69 in Regular Civil Suit No. 231/2012.

2. The petitioner filed suit for declaration, possession and permanent injunction in respect of the suit property mentioned in the plaint. The suit was permitted to be amended and the amended plaint was filed by the petitioner on 02.03.2013. The suit was resisted by the respondents/defendants. Thereafter, issues were framed and the suit was posted for evidence. On 09.08.2018, petitioner filed application

Exhibit- 66 seeking adjournment on the ground that there is strike in Maharashtra and S.T. bus services is not operating. The petitioner is old and infirm person, therefore, is not in a position to remain present in the Court, therefore, adjournment may be granted. The Trial Court rejected the application observing that the matter is already kept for dismissal and hence application filed by the plaintiff is not maintainable.

3. The petitioner thereafter filed application Exhibit-67, seeking adjournment on 24.08.2016, on the ground of ailment of his lawyer. Said application is rejected by the Trial Court on the ground that the matter is at the stage of dismissal order.

4. Thereafter, petitioner filed application Exhibit-68 on 13.11.2018 contending that he wants to produce on record important documents Said documents could not made available to the petitioner, therefore, he cannot not file them in the Court, therefore, adjournment may be granted. This application is rejected by the Trial Court holding that in view of Order XIII Rule 1 of Code of Civil Procedure it is incumbent on the parties in the proceeding to produce all the documents on which they are relying, before settlement of issues. The petitioner has not

mentioned in his application that which documents he wants to produce and they were in whose custody or possession. Therefore, application is rejected.

5. The petitioner thereafter on 11.12.2018 filed application Exhibit-69 for setting aside no evidence order passed below Exhibit-1. Said application is rejected by the Trial Court holding that the petitioner is not diligent in conducting the proceeding and is negligent about his right, therefore, he does not deserve opportunity to lead evidence by setting aside no evidence order passed against him on 13.11.2018, below Exhibit-1. It is further observed that the petitioner is under obligation to produce documents on which he relies along with the plaint at the time of presentation of the plaint, in terms of Order VII Rule 14, which the petitioner has failed to do. If the documents are not in possession and power of the petitioner he has to follow procedure under Order XI, before settlement of issues. Since this compliance is not done by the petitioner, the Trial Court rejected the application filed by the petitioner.

6. I have given due consideration to the submissions made by the learned advocate for the petitioner. Perused the

memo of writ petition, grounds raised therein and annexures thereto. Though served, none appears for respondents.

7. Admittedly, the suit is filed for declaration, possession and injunction in respect of immovable property. Thus, valuable rights of the parties in respect of immovable property are involved in the suit. Reasonable and fair opportunity to prove his case needs to be given to the petitioner. By the impugned order said opportunity is denied to the petitioner, which will cause serious prejudice to the right of the petitioner to prove his case on merit, by leading best possible evidence. In this view of the matter, this Court is of the opinion that no evidence order passed against the petitioner cannot be sustained in the facts of the present case. The impugned order is hereby quashed and set aside.

8. So far as order passed below Exhibit-68 is concerned, this Court is of the opinion that the petitioner may be permitted to file documents. The admissibility and evidentiary value of those documents shall be decided by the Trial Court, at the time of deciding the suit finally.

9. In the result, following order:-

ORDER

- i) The writ petition is allowed.
- ii) The impugned order dated 19.03.2019 passed below Exhibit-69 in Regular Civil Suit No. 231/2012 is hereby quashed and set aside.
- iii) Applications Exhibit-68 and Exhibit-69 are allowed.
- iv) The petitioner has deposited cost of Rs. 20,000/- in the Trial Court pursuant to the order passed by this Court on 21.08.2019. Said amount shall be paid to the respondent.

[NITIN B. SURYAWANSHI, J.]