

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

WRIT PETITION NO.15559 OF 2019

**MADAN APPARAO SHELKE
VERSUS
SUNDERRAO MUNJAJI SHINDE AND ANOTHER**

...
Advocate for the Petitioner : Shri Thigale Girish K. (Naik)
Advocate for Respondent 1 : Shri Mahesh P. Kale
Advocate for Respondent 2 : Shri Nirmal Ramchandra J.

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 08th February, 2022

Per Court:

1. Heard the learned counsel for the petitioner and the learned counsel for respondent No.1.
2. The petitioner, who is impleaded as defendant No.2 in RCS No.21/2012 (old Special Civil Suit No.16/2011), is aggrieved by the order dated 07.10.2019 passed below exhibit-183 thereby, rejecting the application filed by him for setting aside the closure of evidence, forbidding him to lead any evidence.
3. Sequence of events would reveal that the plaintiff had filed the suit for specific performance of contract, declaration and injunction and in the said proceedings, it is the petitioner, who approached this Court in Writ Petition No.3104/2018 and got an order to the effect that the suit

proceedings instituted in the year 2011 should be proceeded expeditiously and disposed of preferably by the end of the next financial year.

4. On 24.09.2018, the petitioner/ defendant No.2 filed his affidavit and on 03.10.2018, he sought an adjournment. Once again the adjournment was sought on 08.10.2018, which was granted subject to payment of costs of Rs.300/-. However, he did not bother to pay costs and moved an application on 25.01.2019 for setting aside the order of “no evidence”. The learned Judge recorded that defendant No.2 is absent since the last four dates i.e. from 24.06.2019 and since the proceedings are pending since the last five years and the High Court has directed it's expeditious disposal, the application came to be rejected.

5. When the petitioner approached this Court through the present Writ Petition, on 02.01.2020 the Trial Court was restrained from proceeding with the suit.

6. Sequence of events reveals that the present petitioner was not diligent in not defending the suit and no fault can be found in the impugned order, when the learned Judge has recorded that he remained absent for last four dates and particularly in the wake of the order passed by this Court expediting the suit. Therefore, the application came to be rightly rejected.

7. The reason cited in the application being illness of defendant No.2, I am convinced to grant indulgence and afford one more

opportunity to the petitioner/ defendant No.2 to defend the suit, but now this must come with costs of Rs.20,000/-. The suit is of the year 2011 and it is almost a decade since its institution. The parties though are entitled to avail and contest the claims, but timeline must be strictly adhered to and the suit which has consumed almost a decade, cannot be further delayed and the plaintiff must get some compensation by way of costs. Subject to payment of costs of Rs.20,000/- (Rupees Twenty Thousand) to be deposited by the petitioner/ defendant No.2 in the Trial Court within a period of four weeks from today, the learned Trial Court shall permit the petitioner/ defendant No.2 to proceed further in the suit. After the costs are deposited as directed above, the original plaintiff is permitted to withdraw the said costs.

Once again this Court is constrained to issue the direction to the Trial Court to expedite the proceedings in RCS No.21/2012 and conclude the same on or before 31.05.2022. It is made clear that both the parties shall render their assistance to the Trial Court in expeditiously concluding the proceedings.

The Writ Petition is, accordingly, disposed of.