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

WRIT PETITION NO.395 OF 2019

HIRAMAN VITHALRAO PIMPLE
VERSUS
RAKHIBAI MOHANSINGH THAKUR AND ORS.

...

Mr D. M. Shinde, Advocate for petitioner;
Mr D. Y. Nandedkar, Advocate for respondent No.1
Mr S. B. Ghatol Patil, Advocate for respondent No.2
Mr H. V. Patil, Advocate for respondent No.3

WITH

WRIT PETITION NO.399 OF 2019

ANUSAYABAI HIRAMAN PIMPLE
VERSUS
GANESHSINGH MADANSINGH THAKUR, DIED, THR.
L.R.s SMT. REKHA GANESHSINGH GUHILOT THAKUR &
OTHERS

...

Mr D. M. Shinde, Advocate for petitioner;
Mr S. B. Ghatol Patil, Advocate for respondent No.2
Mr H. V. Patil, Advocate for respondent No.3

CORAM : SMT. BHARATI DANGRE, J.

DATE : 25th February, 2022

PER COURT:

1. Heard the learned Counsel Shri. Shinde for the petitioners in both the writ petitions listed at Sr. No.932. I have also heard Shri. Nandedkar for respondent No.1 in Writ Petition No.395/2019, the learned Counsel Shri Patil for respondent No.3 and with the

(2)

assistance of the respective parties, I have perused the writ petitions alongwith their annexures, which include Roznama of the proceedings.

2. The petitioners in both the petitions are the plaintiffs who have instituted Special Civil Suit No.131/2002 (Smt. Anusayabai Pimple) and Special Civil Suit No.132/2002 (Hiraman Vitthalrao Pimple), seeking specific performance of the agreement to sale dated 20/11/2001. The respective plaintiffs sought perpetual injunction and also prayed that the sale deed dated 02/06/2011, executed by defendant No.1 in favour of defendant No.3 in respect of suit land be declared as ineffective and not binding on the plaintiffs.

Two distinct suit property were involved in the two suits and the suits came to be instituted in the year 2002, before the learned Civil Judge Junior Division, Nanded and depending upon the valuation, they came to be assigned to the Court of learned Civil Judge Junior Division Ardhapur in the year 2012, w.e.f. 22/08/2012 and were accordingly renumbered.

3. The petitioners are aggrieved by the order passed below Exh.1, dismissing the respective suits on two distinct dates; the

(3)

suit filed by Anusayabai Pimple is dismissed in default on 11/09/2013, whereas suit filed by Hiranman Pimple is dismissed on 04/10/2013 again in default.

4. When the impugned order in Writ Petition No.399/2019 is perused, the learned Judge has recorded the chronology of events as contained in the order sheet and he recorded that the issues were settled in the said suit in the year 2004, which came to be re-casted on 17/10/2012, additional issues were framed on 31/10/2012 and 13/03/2013. Thereafter, the suit was fixed for plaintiff's evidence and on 31/11/2012, she filed her affidavit of examination-in-chief. On 05/11/2012, plaintiff examined her witness, namely, Dadarao Ganpati Bukatre as P.W.2, and he was cross-examined on 07/11/2012. Thereafter, when the suit was came up for cross-examining the plaintiff, the learned Judge was required to postpone the proceedings on various dates mentioned in the said order and these dates are 03/12/2012, 06/12/2012, 12/12/2012, 02/01/2013, 09/01/2013, 16/01/2013, 21/01/2013, 02/02/2013, 06/02/2013, 11/02/2013 and 21/02/2013.

Recording that suit was fixed for cross-examination of the plaintiff, but the plaintiff did not bother to appear, and referring to

(4)

the said act of the plaintiff as projecting negligence to prosecute the suit, the learned Judge recorded that on 26/03/2012, the plaintiffs Advocate filed two applications in casual manner without signature of the plaintiff for seeking direction to defendant No.3 and the legal heirs of defendant No.1 to amend their written statements and these applications came to be rejected on 6/04/2013. This order was challenged before the High Court and the High Court was pleased to stay the proceedings for a while, but dismissed the writ petition on 30/07/2013.

The learned Judge was also cautious of the fact that the District Judge Nanded had issued direction to the Court to dispose of the suit in a time bound manner, since it was pending from 2002 and the timeline came to be extended on 29/04/2013 till the end of June and on 26/06/2013, it was again extended for period of two months and directions were issued to the learned Judge to dispose of suit within two months. Since the High Court had dismissed the writ petition on 30/07/2013, the Court was bound to dispose of the suit on or before 30/09/2013. This factor was strongly weighing on the mind of the learned Judge, since the directions were issued to dispose of the suits in a time bound manner. The learned Court also recorded that on 29/07/2005 also

(5)

the, the suit was dismissed in default but it was restored. Be it so, on 21/08/2013, an application came to be filed for framing of additional issues without signature of the plaintiff, which came to be rejected on 06/09/2013. An application for adjournment was also filed vide Exh.211, which was not accompanied with any medical certificate and the suit was listed for dismissal. At that time, the plaintiff's husband, who is plaintiff in Regular Civil Suit No.94/2012 was present in the Court. Again on 10/09/2013, the plaintiff's Advocate filed an application seeking adjournment on medial ground and the Court recorded that it was in the routine manner without signature of the plaintiff and the matter came to be adjourned on 11/09/2013 and on the said date, the same came to be dismissed in default.

5. Perusal of the impugned order would reveal that an adjournment was sought on the particular date on the ground of illness and the application was not accompanied with any medical certificate and the explanation offered is, since she was hospitalized, she could not produce the medical certificate.

6. On perusal of the impugned order, the conduct of the plaintiff in the suit is highlighted and the learned Judge has

(6)

narrated in great detail the happenings of the various dates in the Court and casual approach of the plaintiff in moving the application from time to time. If the suit is filed by the plaintiff, the plaintiff is duty bound to prosecute it promptly, but instead, it is the plaintiff herself, who was adjourning the said suit and once it was even dismissed in default. The learned Judge has pointed the casual approach of the plaintiff in bringing the application from time to time and the dates specifically recorded in the order, to the effect that when the plaintiff avoided to undergo cross-examination, it reveal that the plaintiff chose to remain absent on those dates though the State was slated for her cross-examination and in her absence, the cross-examination could not be conducted.

Though the learned Counsel for the petitioner would submit that on some dates there is a wrong recording by the learned Judge, on perusal of the dates mentioned in paragraph 1 of the impugned order with the order sheet, which is placed on record, there is discrepancy in recording three dates, but all other dates plaintiff remained absent and the suit could not proceed further, since it was at the stage of her cross-examination.

(7)

7. The plaintiff then moved an application for restoration of the suit by filing Misc. Civil RJE No.15/2013, which came to be rejected on 07/07/2017 and the observations of the learned Judge further justified passing of the rejection order since the Court recorded that she had changed her Advocate for seven times and the attempt was made to prolong the matter. The Court has also noted that the costs was imposed on her when she sought adjournments on 10 to 12 occasions and this reflect that sufficient opportunity is afforded to her to conduct suit, but she failed to avail the same and therefore, even the restoration has been refused.

8. The said order was upheld by the District Judge Nanded when the plaintiff filed Misc. Civil Appeal No.76/2017, by invoking the provisions of an appeal. The order dated 09/10/2018, specifically record that, no litigant has a right to abuse the procedure provided under the Code of Civil Procedure and in the present case, the plaintiff had moved various applications for adjournment and they came to be allowed, subject to costs, but even she did not bother to deposit the costs. Recording that the Trial Court had afforded ample opportunity to her to proceed with the suit, but all the attempts proved to be in

(8)

vain. The suit came to be dismissed in default and its restoration was not justified and was declined. Upholding the order, the appeal came to be dismissed.

9. The learned Counsel for the petitioners/plaintiffs has invited my attention to the medical certificate, which is placed on record on page 52 and 53 of the writ petition and I have perused the medical certificate issued under the signature of the Medical Officer of Shri Guru Govind Singhji Hospital ,Nanded, which is a Government Hospital. The certificate issued in favour of the plaintiff is dated 10/09/2013 and, she is diagnosed with fever with weakness. On the very first date of medical examination i.e. on 10/09/2013, the Doctor certified that she require rest upto three weeks from 10/09/2013 and advised bed rest. The medical certificate which is issued in a prescribed format for availing leave and treating the period of absence from duty, do not inspire any confidence, since the certificate diagnosed the ailment as fever and if the plaintiff goes to the Doctor on 10/09/2013, it is unlikely that on her examination, without making any reference to the treatment, which she going to undertake, she advised bed rest of three weeks.

(9)

10. Since neither the medical certificate inspire any confidence nor was it produced before the authorities below, I am not inclined to accept the reasons that on the said date, the plaintiff was seriously ill to avoid the proceedings. In any case, the plaintiff did not suffer the consequences of the dismissal of the suit only on the basis of her illness on the date, the learned Judge was compelled to pass order of dismissal on account of previous conduct of the plaintiff in conducting the proceedings.

11. It is trite position of law that, when the parties approach the Court, they are expected to follow remedy available to them diligently and in not prosecuting the remedy, the judicious time of the Court is being wasted. Though the learned Counsel for the petitioners has vehemently argued and submitted before me that, subject to some costs, suit may be restored, I am not inclined to grant request, for the reason that the conduct of the plaintiff reveal that the plaintiff has taken Court proceedings for granted, and on frivolous ground, she has sought adjournments and apart from the inconvenience being caused to the defendant, since the time of the Court is consumed, the request cannot be granted, even if the plaintiff/petitioner desire to deposit some costs, as it can be seen that the suit is pending since the year 2002, and exactly after two

decades, it's restoration is being sought. Hence the request is rejected and the Writ Petition No.399/2019 deserve to be dismissed.

12. As far as Writ Petition No.395/2019 is concerned, when the impugned order passed by the learned Judge on 04/10/2013 is perused, even in this order, the learned Judge has recorded that the suit was dismissed for the first time on 29/07/2005 and it came to be restored thereafter. It is specifically recorded that Roznama of six months reflect that the suit was fixed for dismissal order on 3 to 4 times, however, still plaintiff did not take it seriously. In the wake of the pendency of the suit for a considerable length of time and the directions being issued by the District Judge to conclude the proceeding therein, and by recording that the progress of the proceedings was at a very slow pace and that though the suit was filed by the plaintiff, he was not serious to prosecute it diligently, and on the other hand postponing the proceedings in the suit. Even on the date on which it was dismissed in default, it was listed for passing of dismissal order and was at this stage when the plaintiff failed to appear and the learned Judge has recorded that, when the suit is called out for hearing thrice before lunch break

(11)

and twice after lunch break, he did not present in the Court, which resulted in its dismissal.

The restoration application was also rejected by recording to prove his assertion that on 04/10/2013, he was ill, no evidence was brought on record. While dealing with the application for restoration, the applicant stepped into witness box, but failed to bring any document to support his illness nor was the doctor examine to establish his assertion that he was seriously ill on 04/10/2013, which even prohibited him from attending the proceedings in the Court. The learned Judge has also recorded that in the cross-examination, it is stated that he was admitted in Hospital for 15 days to one month, but there was no pleading to that effect in the application, and therefore, the said statement was not accepted. The restoration application was also dismissed on 07/07/2017. Further the learned District Judge in an appeal, confirmed the findings of the Court below, by relying upon the decision of the Hon'ble Apex Court, in case Shiv Contex Vs. Tirgum Auto Plast Pvt. Ltd. & ors., 2012 (2) Mh.L.J. 439, where a direction issued is to the effect that, no litigant has right to abuse the procedure of the Court provided in the Code of Civil Procedure, and the unnecessary adjournments are to be deprecated

(12)

and can be granted only when “sufficient cause” is made out. Being guided by the principle laid down by the Hon’ble Apex Court, the appellate Court refused to show any indulgence and dismissed the appeal.

13. The medical certificate produced by the petitioner on record along with the present writ petition, which was not in fact produced before the Trial Court while establishing his claim, appear to be a certificate issued by a private hospital on 09/09/2013, which certify that the petitioner/plaintiff is suffering from ‘Hypertension and Ronal cadie pain E weakness’ and he is under treatment. He is advised bed rest for 2 to 3 weeks from 09/09/2013. If this certificate was in possession of the plaintiff on 09/09/2013, one does not understand, why this certificate was not produced before the Court in support of his application for restoration of the suit. This certificate, at this stage when the writ petition is filed, therefore, cannot be entertained as a ground to justify sufficient cause being depicted. The “sufficient cause”, seeking restoration of the suit ought to have been pleaded and demonstrated before the Trial Court and it is of no consequence that certificate is produced before this Court, since certificate

(13)

cannot be accepted without an opportunity being given to cross-examine in respect of the said aspect.

14. In the wake of the above, no amount of costs being paid by petitioners, can compensate the loss of judicious time of the Court in entertaining the suits, in which the plaintiff himself was not interested in prosecuting and the lackadaisical approach adopted by plaintiff, do not deserve any mercy upon them.

Resultantly, upholding the impugned orders, both the writ petition are dismissed.

(SMT. BHARATI DANGRE, J.)

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