

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.983 OF 2022

Classic Floorings and Interior Pvt.Ltd. & Anr. .. Petitioner

Versus

Satish Dhirajlal Vithalani & Ors.

.. Respondents

...

Mr.Archit Jayakar with Ms.Jasmeet Kaur and Ms.Pooja Yadav
i/b Jayakar & Partners for the Petitioners.

Ms.Ranjana Parikh i/b Mr.Suraj S. Shah for the Respondents.

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CORAM: RAVINDRA V. GHUGE, J.

DATED : 04th FEBRUARY, 2022

P.C:-

1. This matter was heard extensively on 03/02/2022 and today. After marathon submissions by the learned counsel for the respective sides, the learned Advocate for the petitioners, who are defendant Nos.70 and 66, respectively, agreed to pay cost of Rs.5,00,000/- to the original plaintiff Trust represented by the trustees, as costs for conducting further cross examination of PW 1-Satish Dhirajlal Vithalani, over a period of only three hours, in relation to issue Nos.9, 12, 18 and 22.

2. The learned Advocate representing the plaintiffs submits that the plaintiffs have reserved their right to lead evidence in rebuttal with regard to issue Nos.8 to 20 in the light of the purshis Exh.947. A further intimation vide Exh.1338 is addressed to the trial Court.

3. By order dated 03/12/2021 (Coram : A. S. Gadkari, J.) passed in Writ Petition No.4594 of 2014, it was recorded that the Registry has received a communication dated 11/11/2020 from the learned trial Court seeking ,extension of time by one year for deciding T.E. & R. Suit No.5/6 of 2008. It was ordered that an extension of two years is being granted w.e.f. 03/12/2021. It was also recorded that there are 158 defendants in the suit.

4. This petition has been brought to this Court by the petitioners on the ground that their earlier Advocate Shri K.K.Nariman had conducted a common cross-examination of PW 1 on behalf of defendant Nos.44, 52, 66, 70, 73, 80, 81 to 83, 139 to 141 and 158. These petitioners i.e. defendant Nos.66 and 70 have a specific cause of action in terms of issue Nos.9, 12, 18 and 22. They were intimated by Advocate Nariman that he is withdrawing his appearance on their behalf, after the common cross-examination of PW 1 was concluded on 14/10/2021.

5. After considering the submissions of the respective sides and especially the strenuous submissions of Mrs.Parikh on behalf of the plaintiffs, I was not inclined to exercise my discretion in favour of the petitioners. To test their *bona fides*, I called upon Shri Jayakar, the learned Advocate for the petitioners to state whether the petitioners would pay costs of Rs.5,00,000/- (Rs.2.5 Lakhs each) to the plaintiffs. Today, it is informed that they are willing to pay this amount as costs.

6 The learned Advocates Mrs.Parikh and Mr.Shah, who represent the plaintiffs, submit on instructions that the said amount shall be paid by the petitioners directly to the Trust, namely, Khimji Bhagwandas Charity Trust, on or before 07/02/2022. The learned Advocate for the petitioners agrees to ensure that the Demand Draft for a total amount of Rs.5,00,000/- would be delivered to the Secretary of the Trust or Advocates Mrs.Parikh and Mr. Shah, who conduct the matter before the trial Court.

7. Considering the above and by recording that this order shall not be cited as a precedent, this petition is partly allowed with the following directions:-

(a) An amount of Rs.5,00,000/- shall be paid by the petitioners through a Demand Draft drawn in the name of Khimji Bhagwandas Charity Trust, to be delivered to the Secretary or the learned Advocates for the plaintiff Trust, on or before 07/02/2022.

(b) The plaintiffs are agreeable to present PW 1 for further cross-examination on 10/02/2022 at 2.30 p.m.

(c) A maximum of three hours would be allocated to these two petitioners, who have agreed to conduct a common further cross-examination on behalf of defendant Nos.66 and 70.

(c) The learned Judge of the trial Court would allow these defendants to commence the cross-examination at 2.30 p.m. on 10/02/2022 and allocate a maximum of three hours for concluding such cross-examination.

(d) The cross-examination would be restricted only to the extent of issue Nos.9, 12, 18 and 22.

(e) The above stated cross-examination would not create an embargo on the plaintiffs in relation to Exh.947 and Exh.1338 and re-examination of PW 1 (if any) in accordance with law, after the further cross-examination of PW 1 has concluded.

(f) Needless to state, if liberty to re-examine PW 1, after such cross-examination is granted, the trial Court would not impose the restriction of three hours that has been applied for the cross-examination by defendant Nos.66 and 70.

(g) Considering that the above order has been dictated in the open Court, the trial Court would not pass "evidence closed" order against the plaintiffs till PW 1 is subjected to the cross-examination as permitted above and re-examination, if any.

(RAVINDRA V. GHUGE, J.)