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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5996 OF 2021

RELIANCE GENERAL INSURANCE CO. LTD. Petitioners.

V/s

RAMCHANDRA SHRIPATI PARGERespondent

Mr. Samir A. Vaidya for the Petitioners.

Mr. Chaitanya Nikte a/w Mr. Hitanshu Jain for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 12, 2022

P.C.:-

1] After ex parte decree was passed against the Petitioners, same was set aside on 30/07/2016, subject to deposit of 70% of the decretal amount. Withdrawal was permitted by Respondent/Plaintiff subject to furnishing bank guarantee.

2] The Special Civil Suit as such, was restored to the file.

3] Thereafter, it appears that Petitioners filed Written Statement and instead of cooperating with the Court below in expeditious disposal of the suit as was directed, adjournments were sought, resulting Court below passing “No cross” order.

4] Exhibit-53 – application moved by the present Petitioners/Defendants for recalling of “No cross” order came to be rejected on 20/11/2019. As such, this Petition.

5] I am informed that the order impugned below Exhibit-53, was initially challenged before the learned District Judge. However, since Misc. Civil Application was not maintainable, same came to be withdrawn and present Petition is preferred.

6] Submissions of the learned Counsel for the Petitioners are, documents and affidavit were filed by the Plaintiff vide Exhibits 45 and 47 on 01/03/2019. The legal head of the Petitioners/Defendants was on leave and thereafter left the Petitioners’ employment. As such, appropriate instructions were not received, resulting into on

12/06/2019 Court passing “No say” order and accordingly matter came to be adjourned on 09/09/2019. On 09/09/2019, trial in the suit was not attended by the Petitioners and “No cross” order came to be passed. He further submitted that for default of lawyer client may not be made to suffer. Apart from above, his contentions are, position of legal head of the Company remained vacant for considerable time, as such instructions in the matter could not be received resulting into causing delay in trial. However, there was no malafide act on the part of the Petitioners to delay the trial. He would further submit that the Petitioners can be put to reasonable conditions.

7] Counsel for the Respondent/Plaintiff submits that the Court below has already shown indulgence once while setting aside the ex parte decree dated 18/12/2014. According to him, trial was to be expeditiously decided. However, Petitioners are causing unnecessary delay in the trial, particularly considering their act of not cooperating with the trial court and filing the proceedings before the wrong forum.

8] Considered submissions.

9] Intentional delay on the part of the Petitioners in expeditious disposal of the trial can be verymuch noticed from the following conduct of the Petitioners.

10] Initially, when the suit was filed, Petitioners chose to remain absent, resulting into passing ex parte decree on 18/12/2014. Learned District Judge condoned the delay caused in moving application under Order IX Rule 13, subject to certain conditions. Thereafter, sometime in 2018 ex parte decree came to be set aside, as is informed by Mr. Vaidya learned Counsel for the Petitioners. After ex parte decree was set aside, Petitioners were given chance to cross-examine the witness of the Plaintiff which they have failed to. As a consequence, “No cross” order was passed on 09/09/2019 and thereafter Petitioners filed proceedings questioning the said “No cross” order before the wrong forum till filing of the present Petition. As such, intentional delay on the part of the Petitioners can be very much inferred.

11] However, learned Counsel for the Petitioners Mr. Vaidya has given assurance on instructions that in case if “No cross” order is set

aside, Petitioners shall complete the cross-examination of the witness on the given date, which is accepted as an undertaking to this Court. Apart from above, the assurance that Petitioners shall not seek any adjournment in the pending suit and shall extend all cooperation in expeditious disposal of the suit is also taken on record as an undertaking.

12] Apart from above, learned Counsel for the Respondent/Plaintiff submits that condition put-forth by the Court below of executing banking guarantee while permitting the Respondent to withdraw 70% of the decretal amount, if modified, he shall be consenting for setting aside “No cross” order.

13] In view of above, following order is passed:-

ORDER

(i) The order impugned is set aside.

(ii) Statement made by Mr. Vaidya, learned Counsel for the Petitioners that Petitioners shall be completing cross-examination on the next date of hearing and shall not seek any adjournment is accepted as an

undertaking to this Court.

(iii) Respondent/Plaintiff is permitted to withdraw the decretal amount to the extent of 70% as reflected in the order dated 30/07/2016 passed in MCA No.219 of 2016 by the Adhoc District Judge-1, Pune on plain undertaking to the said Court that in case if suit is dismissed, he shall redeposit the said amount as shall be directed by the Court below.

(iv) Petition stands disposed of in the above terms.

(NITIN W. SAMBRE, J.)