

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION 9163 OF 2018****WITH****INTERIM APPLICATION 2620 OF 2021****IN****WRIT PETITION 9163 OF 2018**

**Ashok Choudhary, since deceased
through Legal Heirs**

..... Petitioners

VERSUS

Smt.Kashmira N. Petigara & Ors.

..... Respondents

Mr.R.S. Apte, Senior Counsel with Mr.Nitin Deshpande and Mr.S.C. Wakankar for the Petitioners.

Ms.Jeenal Upadhyay for the Respondent 4.

CORAM : ROHIT B.DEO, J.

DATE : 9TH JUNE, 2022

P.C:-

The petitioner is the plaintiff in Special Civil Suit 1591 of 2010 which is brought for decree of specific performance. The suit came to be dismissed in default vide order dated 8th January, 2018.

2. The plaintiff sought restoration, which application the learned Trial Court rejected vide order dated 9th July, 2018.

3. Both the afore-referred orders are impugned.

4. I have heard learned senior counsel Mr.Apte for the petitioners and learned counsel Ms.Upadhyay for the respondent 4.

5. It would be necessary to peruse the common order below Exs. 1 and 151 dated 8th January, 2018 and particularly the operative part thereof. The operative part recites that the application for adjournment is rejected and the suit is dismissed for default.

6. For the purpose of the instant petition, it would not be necessary to consider whether the reasons pleaded by the plaintiff in support of the application for adjournment were justified, from strictly legalistic perspective. Suffice it to note that the adjournment was sought on the premise that the plaintiff intends to challenge the order of the Trial Court whereby the application seeking stay of the proceedings came to be rejected. The plaintiff pleaded that certified copy of the order which the plaintiff wishes to assail is obtained only recently.

7. The learned trial Court was presumably swayed by the conduct of the plaintiff, as the trial court perceived in view of the adjournments sought and orders passed in the proceedings, earlier. The learned Trial

Court was further conscious of the fact that the matters which were pending for more than five years ought to be accorded priority in disposal. While the anxiety of the learned trial court to dispose of the matters can be appreciated, it is not possible to approve the course adopted by the learned Trial Judge. In my considered view, the learned Trial Judge clearly erred in observing that by not stepping into the witness box, the plaintiff failed to show the entitlement for specific performance of contract. Surprisingly, what is observed in paragraph 14 of the order impugned is that in view of lack of evidence, the application for adjournment does not make out a ground which can be considered. The proper course would have been, if at all, to reject the adjournment request and to direct the plaintiff to produce the evidence.

8. The learned Trial Court further urged in not entertaining the application for recalling the order on the premise that the only remedy is the appellate remedy. However, no definite observation is necessary on the said aspect since I am satisfied that the learned Trial Judge ought not to have rejected the adjournment application and simultaneously dismissed the suit.

9. The learned counsel for the contesting respondent points out that the suit is old. She would submit that the plaintiff is interested in protracting the trial since the cause appears to be unmerited. The apprehension expressed can be addressed and allayed by requesting the learned Trial Court to decide the suit in a time bound manner.

10. The orders impugned are set aside. The suit is restored to file.

11. The suit is made time bound.

12. The learned Trial Judge shall decide the suit in any event within next nine months from the date of appearance of the parties. The parties shall appear before the Court which was in seisin of the matter on 16th June, 2022 without waiting for any formal notice or communication.

13. The plaintiff shall conclude the entire evidence within next three months.

14. The learned trial judge is requested to ensure that no adjournment shall be granted unless an exceptional case is made out.

15. Petition is disposed of in the aforesaid terms.

16. In view of disposal of the writ petition, interim application is also disposed of.

[ROHIT B.DEO, J.]