

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 893 OF 2021

Narayan T. Joshi vs. Pramila Purushottam Saraf and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. N. B. Karade, Advocate for petitioner.
Mr. K. S. Chiwarkar, Advocate for respondent Nos.1 to 7.
Mr. Rohit Vaidya, Advocate for respondent Nos.8 to 14.

CORAM : MANISH PITALE J.

DATE : 25/03/2022

By this writ petition, the petitioner has challenged order dated 03/03/2020, passed by the Court of 7th Joint Civil Judge Senior Division, Amravati, whereby an application filed on behalf of the petitioner (original defendant No.9) at Exh.78 for granting permission to adduce evidence and for setting aside the order dated 20/07/2019, has been rejected.

2. The respondents herein have filed suit for partition and separate possession wherein the petitioner is arrayed as defendant No.9. The record shows that this is the second default on the part of the petitioner. In fact, the learned counsel appearing

for the respondents have pointed out that the petitioner has been indulging in activities leading to delay in proceedings before the Court below, perhaps because he happens to be in possession of some of the properties of which partition is sought.

3. On 05/04/2019, an order was passed that since the petitioner remained absent and he failed to lead evidence, the suit would proceed for final arguments without his evidence. Subsequently, the said order was recalled, for the reason that the counsel engaged by the petitioner had died and new counsel had been engaged. Despite engaging new counsel the petitioner continued to indulge in activities delaying the proceedings before the Court below and eventually on 20/07/2019, the Court below was constrained to close the evidence of the petitioner, after recording that he had failed to lead evidence. The petitioner filed the aforesaid application at Exh.78 for setting aside the order dated 20/07/2019 and for permission to adduce evidence. By the impugned order dated 03/03/2020, the Court below found that there were repeated defaults on the part of the petitioner and that the suit had reached at the stage of final arguments. The Court below found that the petitioner himself had filed an application for adjournment and sought permission for finally

arguing the matter. On this basis, the application filed by the petitioner at Exh.78 was rejected.

4. Heard learned counsel for the rival parties. A perusal of the record does indicate that the petitioner has been recalcitrant. In fact, the record indicates that the petitioner has been delaying proceedings before the Court below. The petitioner and the other parties to the litigation are senior citizens and delay in the proceedings is causing inconvenience to all the parties. There is no dispute about the fact that an order closing the evidence of the petitioner was filed earlier, which was recalled when the Court below showed indulgence and yet the petitioner again indulged in such tactics for delaying the proceedings before the Court below. In this backdrop, it cannot be said that the Court below committed any error in rejecting the application filed at Exh. 78 on behalf of the petitioner.

5. Yet, while exercising writ jurisdiction, this Court is concerned that the proceedings pending before the Court below are decided on merits. There is a possibility that if the impugned order is maintained, after culmination of the proceedings before the Court below, at the appellate stage, there might arise a situation where the matter may have to

be remanded only because the petitioner was not given an opportunity to adduce evidence. This would unnecessarily cause further grave inconvenience to the parties to the litigation. It is only with a view to grant one last chance to the petitioner to lead evidence that this Court is showing indulgence in the present petition.

6. At the same time, this Court cannot ignore the fact that the parties to the litigation had to face inconvenience and harassment, because of the approach adopted by the petitioner. Therefore, it would be appropriate that the petitioner is directed to deposit costs, which shall be disbursed to the original plaintiffs before the Court below.

7. In view of the above, the writ petition is allowed. The impugned order is quashed and set aside. Accordingly, the application at Exh.78 is allowed. Consequently, order dated 20/07/2019 closing the evidence of the petitioner also stands set aside. The petitioner is granted opportunity to lead evidence.

8. It is made clear that the petitioner shall not indulge in any further activities that may cause delay in the proceedings before the Court below. All

the parties to the pending proceedings before the Court below are directed to co-operate with the Court for expeditious disposal of the suit, particularly because some of the parties to the litigation are not only senior citizens, but they have crossed the age of 70 years and above.

9. The impugned order is set aside, subject to the petitioner depositing costs of Rs.25000/- before the Court below within a period of three weeks from today. Upon deposit of such costs the Court below shall disburse the same to the original plaintiffs.

10. It is made clear that if the petitioner fails to deposit the amount of costs within the aforesaid period of three weeks from today, this order shall stand recalled and the writ petition will stand dismissed.

11. The suit was filed in the year 2015 and since considerable progress has been made in the present proceedings before the Court below, it is directed that the suit shall be disposed of expeditiously and in any case within a period of three months from today.