

WRIT PETITION NO.8826 OF 2022

Versus

■ ■ ■ ■ ■ ■ ■

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th SEPTEMBER, 2023

ORDER :

1. Leave to correct prayer clause.
2. Petitioners are aggrieved by the order passed by learned 2nd Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-46 in Regular Civil Suit No. 221/2018, thereby rejecting the application filed by petitioners for setting aside the evidence close order.
3. Respondents/plaintiffs filed suit challenging the panchnama conducted by petitioners on 17.02.2016 and fine amount of RS. 3,24,025/- imposed on plaintiffs for illegal excavation of sand. Petitioners/defendants appeared and

opposed the suit by filing written statement. Thereafter, plaintiffs filed evidence affidavit and they were cross examined by defendants. Thereafter, by order dated on 17.01.2022 evidence of defendants was closed by the Trial Court. Defendants filed application Exhibit-46 on 21.01.2022, contending that they want to lead evidence and it is in the interest of justice to permit them to lead evidence, therefore, evidence close order passed against them be set aside and they be permitted to lead evidence. This application is rejected by the Trial Court. Hence, the present petition.

4. Heard learned Assistant Government Pleader for petitioners. None appears for respondents, though duly served. Perused the writ petition memo, annexures thereto and the impugned order.

5. Perusal of record indicates that after plaintiffs closed their evidence on 24.09.2021, defendants examined two witnesses. Cross examination of DW 1 was completed on 21.10.2021, and it appears that thereafter due to covid pandemic further evidence could not be lead by defendants and no adjournment applications were filed, therefore, evidence of defendants was closed by order dated 17.01.2022. Argument of

plaintiffs' advocate is heard on that date and on 19.01.2022, suit was fixed for defendants' arguments, but defendants failed to argue the matter. The matter was adjourned to 21.01.2022 and on that date defendants filed application Exhibit-46 for setting aside the order by which their evidence is closed.

6. It is therefore clear that defendants failed to lead evidence and failed to file adjournment applications during covid pandemic. So as to give reasonable and fair opportunity to defendants to contest the suit on merits, Trial Court ought to have allowed the application Exhibit-46. While rejecting the said application, Trial Court has adopted hypertechnical approach, which cannot be sustained. In the result, following order:

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 01.02.2022, passed by learned Civil Judge, Senior Division, Ahmednagar, below Exhibit-46, in Regular Civil Suit No. 221/2018, is hereby quashed and set aside.
- (III) Application Exhibit-46 is allowed, subject to petitioners paying cost of Rs. 5,000/- to plaintiffs/respondents in the Trial Court.

[NITIN B. SURYAWANSHI, J.]