

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12620 OF 2022

Gulnaz Begum Mohammed Isaque
and others

.... Petitioners

Versus

Ayesha Tanveer Shaikh Haroon
and others

.... Respondents

.....
Ms. A.N. Ansari, Advocate for the Petitioners
Mr. A.B. Shinde, Advocate for Respondent No.5
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 07th AUGUST, 2023

ORDER :

1. This petition under Article 227 of the Constitution of India, is filed for following reliefs:

"(B) To quash and set aside order dated 4.12.2021 i.e. closing of evidence of Petitioner and order passed on Exhibit 52 and 55 dated 4.8.2022 by Civil Judge, Senior Division, Nanded in RJE No.747/2020, by issuing any appropriate writ order or direction as the case may be.

(C) By allowing Exhibit 55 the Petitioner may be allowed to file replica/reply to subsequent proceeding and by setting order dated 4.12.2021 Petitioner may be granted permission to lead the evidence, by issuing

any appropriate writ order or direction as the case may be.”

2. Petitioners filed Misc. Civil Application No.747 of 2020 under the Bombay Regulation Act, 1827, seeking heirship certificate of deceased Shaikh Haroon Shaikh Moinuddin claiming to be his wife and children. They contended that the deceased was serving at Government College of Education as Assistant Professor.

3. Respondents claiming to be wife and children of the deceased, filed objection in the said proceeding. They were added as respondent Nos. 1 to 5 by order dated 11/10/2021.

4. By filing application Exhibit-52, the petitioners prayed for calling service record of respondent No.5 from the custody of Civil Surgeon, SGGH Memorial Hospital, Nanded, from where respondent No.5 retired. The petitioners contended that, they have accepted the status of respondent Nos. 1 to 4 being legal heirs of deceased Shaikh Haroon Shaikh Moinuddin. However, respondent No.5 is contesting the application on the ground that she is first wife of deceased. The Court has granted permission to respondent No.5 to adduce evidence. In such situation, to prove real status of respondent No.5, certain documents regarding service of

respondent No.5 are necessary as in the service record, Respondent No.5 has mentioned her status as divorcee. The said documents are necessary for confronting respondent No.5 during her cross-examination. The said application is rejected by the Trial Court.

5. By filing application Exhibit-55, the petitioners prayed for permission to file replication/subsequent pleading to the objection petition filed by respondent No.5. The said application is also rejected by the Trial Court. The orders passed below Exhibits-52 and 55 are impugned in the present petition.

6. Heard the learned advocate for the petitioners and the learned advocate for the respondents. Perused the writ petition memo, annexures thereto and the impugned orders.

7. Perusal of the record shows that application Exhibit-52 is rejected by the Trial Court holding that, after framing of the issues, evidence was not adduced by the petitioners. Hence, permission was granted to respondent No.5 to adduce her evidence. When the petitioners' evidence is already closed, they have filed this application for calling record. Now, the burden is on respondent No.5 to prove that she is the legal

heir of the deceased. Since, there is no pleading of the petitioners regarding status of respondent No.5, to fill up lacuna, this application is filed. Hence, the application is rejected.

8. It is, therefore, clear that the Trial Court has failed to give sufficient opportunity to the petitioners to contest the matter on merits by passing the order of closer of evidence of the petitioner. By rejecting the application Exhibit-55, prayer of the petitioners to amend their pleading is also rejected by the Trial Court. Both the impugned orders deny reasonable and fair opportunity to the petitioners to contest their matter on merits, though the status of the petitioners is in question. The service record of respondent No.5 would enable the Trial Court to effectively decide the dispute between the parties. In that view of the matter, both the impugned orders since they deny reasonable and fair opportunity to the petitioners, cannot be sustained. Hence, the following order:

ORDER

(I) The writ petition is allowed in terms of prayer clauses (B) and (C).

- (II) The trial is expedited and shall be concluded within a period of three months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane