

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.507 OF 2023

**SUCHETANA SUBHASH GHANTE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS COLLECTOR
AND OTHERS**

...
Mr. G. L. Kedar, Advocate for the Petitioner.
MR. S. S. Dande, AGP for Respondents-State.
...

**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 03rd MARCH, 2023.**

PER COURT:-

1. Heard.
2. By order dated 19.01.2023 notice was directed to be issued to the respondents. The petitioner was also directed to serve the respondents by private notice and to file affidavit of service. Office noting shows that the notice issued to respondent nos.3 to 6 are returned unserved for want of time. The petitioner has filed affidavit of service, which shows that respondent nos.3 to 6 have been served through R.P.A.D. The tracking report is annexed to the affidavit. In view of the controversy involved, the petition has been taken up for hearing.
3. None appears for the respondent nos.3 to 6 in spite of being served through private notice.
4. The challenge in the petition is to the order dated 22.09.2022 rejecting the petitioner's application below Exhibit-103

seeking to set aside the order dated 30.08.2022 discarding the petitioner's evidence, as she was absent for cross-examination.

5. The admitted fact is that the petitioner had not filed her affidavit in lieu of examination-in-chief and as such, her evidence came to be closed by order dated 03.09.2021. By order dated 21.06.2022 the order dated 03.09.2021 was set aside subject to the payment of costs of Rs.5000/-. Subsequently, on 05.07.2022 the petitioner filed her affidavit in lieu of examination-in-chief and thereafter, the petitioner did not present herself for cross-examination. By order dated 30.08.2022 her evidence came to be discarded.

6. Heard learned counsel appearing for the petitioner.

7. Learned counsel appearing for the petitioner submits that the order dated 21.06.2022 imposing costs on the petitioner was duly complied with by the petitioner and the affidavit in lieu of examination-in-chief was filed on 05.07.2022. He would further submit that on 30.08.2022 the petitioner was not aware of the date in as much as on the previous occasion the matter was referred to the Lok Adalat for the purpose of settlement and as such, in Lok Adalat the next date was given as 30.08.2022, which was not known to the petitioner and as such, she could not remain present on 30.08.2022.

8. The Trial Court by impugned order has observed that on 27.07.2022 both the parties had submitted a pursis for referring the matter to the Lok Adalat and it appears that, there was no settlement before the Lok Adalat. The Trial Court has

further observed that, as the petitioner claims that she was not aware of the date of hearing of 30.08.2022, it appears that she was not present before the Lok Adalat. The Trial Court has rejected the application preferred by the petitioner on the ground that the proceedings are almost 10 years old and still at the stage of evidence of the petitioner.

9. It is not disputed that the proceedings are of the year 2013 and in spite of repeated attempts it appears that evidence of the petitioner is still not completed. However, considering that the right of the petitioner of leading evidence in support of her claim has given to be closed by reason of the impugned order, in my opinion, the interest of justice will be served if the impugned order dated 22.09.2022 is quashed and set aside subject to the payment of costs of Rs.10,000/- to be paid by the petitioner to the respondents.

10. Reliance of the learned counsel for the petitioner on the decision of this Court in case of Sainath ***Amonkar and Another Vs. Ravindra K. Amonkar and Others***, reported in ***2014 SCC OnLine Bom 1072*** is squarely applicable in the facts of the case wherein while considering the scope of Order XVII Rule 1 of the Code of Civil Procedure this Court has held that as far as the provisions as regards the adjournment is a rule of procedure and is not mandatory but directory. Although this Court in the interest of justice is permitting the petitioner to lead evidence, it needs to be noted that conduct of the petitioner is not appreciated. As the proceeding is of the year 2013, it is expected that the petitioner, who is the plaintiff herself will co-operate and complete the evidence in time bound manner.

11. For the reasons above, impugned order dated 22.09.2022 is hereby quashed and set aside subject to the payment of costs of Rs.10,000/- to be paid to the respondents.

12. Learned counsel for the petitioner on instructions submits that no further adjournment will be sought by the petitioner, which statement is accepted as an undertaking to this Court.

(SHARMILA U. DESHMUKH)
JUDGE