

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5613 OF 2021

Balaji Sayanna Yajja

...Petitioner

Versus

Shrimati Shashikala Laxminarayan
Gadi & Ors.

...Respondents

Mr. Kishor Patil i/b Mr. Nilesh Wable, for the Petitioner.

Mr. A. B. Tajane i/b Ms Kavita P. Shinde, for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 04th AUGUST, 2023.

P.C.:

. Heard.

2. The challenge in the petition is to the order dated 24th February, 2020 rejecting the Petitioner's application for setting aside the evidence close order dated 13th December, 2019.

3. Learned Counsel appearing for the Petitioner submits that the affidavit of evidence was filed on 07th August, 2019. He would further submit that on 13th December, 2019 as the Advocate was not

present an application came to be moved for adjourning the matter, which came to be rejected. It is pointed out that subsequently an application was moved for setting aside the order which has been rejected on the ground that on previous two occasions there was an order of closure of evidence which was set aside and the matter being old, there was no cogent reason for adjournment.

4. *Per contra*, Mr. Tajane, learned Counsel appearing for the Respondents would appose the application and support that the Miscellaneous Civil Application is of the year 2014 and the opponent is unnecessary prolonging the litigation. In support of the submission, he relies upon the decision of this Court in the case of ***Surekha Jayantilal Shah V/s. Vinod Madhavrao Kulkarni***¹ where this Court after taking into consideration the decision of the Apex Court in the case of ***Shiv Cotex V/s. Tirgun Auto Plast (P) Ltd***² has rejected the petition on the ground that adjournments were sought by the Petitioner without any reason.

5. Considered the submissions.

6. From the material which has been produced on record, it

1 Writ petition No. 7893.2015 (Bom. Civil)

2 2011 9 SCC 678

appears that the affidavit of evidence was filed on 07th August, 2019 and undisputed position is that on 13th December, 2019, an application for adjournment was filed as the Advocate for the applicant was not present and on that day the evidence of the Petitioner came to be closed. By the impugned order, the trial Court has refused to set aside the order of closure of evidence by taking into consideration the past conduct of the Petitioner, wherein twice the evidence close order was passed. Considering that by closure of evidence a valuable right is deprived to a litigant, unless it is shown that the litigant has been so grossly negligent in prosecuting the proceedings, in my view, a lenient view ought to have been taken by the trial Court. It appears that on 07th August, 2019 the affidavit of evidence was filed and on 13th December, 2019, the evidence close order was passed.

7. It is not disputed that the application for adjournment was made on same date when the Petitioner was present in-person and the reason put forward was that his counsel was not present. No doubt it is expected that considering that the matter is of the year 2014, it has to proceed expeditiously. However, in the present case, in the interest of justice, the impugned order dated 24th February, 2020 is required to be quashed and set aside, as and by way of a last

chance. It is made clear that the Petitioner will not seek any further adjournment in the matter, unless absolutely necessary and would ensure that the evidence is completed at the earliest.

8. By reason of the impugned order being set aside, the application seeking setting aside of the evidence close order stands allowed. Writ petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH J.)