

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1650 OF 2020

Mohammedhussain Siraj Mulla

...Petitioner

Versus

Junnadbasha Urf Babasaheb Siraj Mulla & Ors. ...Respondents

*Mr. Bhooshan Mandlik i/b Mr. Chetan G. Patil for the petitioner.
Mr. Prashant Bhavake for the respondents.*

Coram : Sharmila U. Deshmukh, J.

Date : June 23, 2023.

P. C. :

1. Heard Mr. Mandlik, learned counsel appearing for the petitioner-defendant and Mr. Bhavake, learned counsel appearing for the respondents-plaintiff.

2. This is one of those cases where the judicial system has been taken for granted and the suit of the year 2003 is not concluded till the year 2023. The admitted position is that the evidence of the plaintiff commenced in the year 2010 and even after examining 14 witnesses, the evidence of the plaintiff is not closed and the plaintiff proposes to examine further 5 witnesses.

3. The suit was filed seeking a declaration that the sale deed dated 7th May, 2002 is not binding on the plaintiff and for an order of mandatory injunction restraining the defendant from obstructing the plaintiff's possession.

4. The evidence of the plaintiff commenced in the year 2010 and the admitted position is that 14 witnesses were examined. Despite examining 14 witnesses since the year 2010, the plaintiff has not completed his evidence. The Trial Court by two orders dated 4th February, 2019 and 12th February, 2019 granted the petitioners last chance. Subsequently, order of closing the plaintiffs evidence came to be passed and an application below Exhibit-432 came to be filed for setting aside the order of closure evidence and for permission to lead further evidence.

5. Learned counsel appearing for the respondent is not able to demonstrate from the application filed below Exhibit-432 that any details of the proposed witnesses was placed on record. Relying on the averments made in the said application the Trial Court by its order dated 23rd October, 2019 surprisingly set aside the "evidence close" order subject to cost of Rs. 1,500/- and subject to the condition that that plaintiff will complete his evidence within next 15 days.

6. What is to be noted is that by the said order dated 23rd October, 2019, the Trial Court records the objections of the petitioner that the petitioner-defendant had filed his affidavit of evidence on 3rd September, 2019 that the plaintiff-respondent was abusing the procedure of law; that the plaintiff-respondent had not given the list of witnesses and sought rejection of the application. Without considering the say of the petitioner-defendant, the Trial Court set aside the "evidence close" order and permitted the plaintiff-respondent to lead further evidence subject to the condition of deposit of cost and the evidence to be completed within the next 15 days.

7. Although having been permitted to lead further evidence, another application came to be filed by the respondent-plaintiff for setting aside the condition of 15 days on the ground that when the witnesses were coming to the Court for cross-examination, they were threatened by defendant no. 2. The Trial Court surprisingly, by its order dated 4th January, 2020 accepted the submission of the respondent-plaintiff and without taking into consideration the fact that remedies are available in law in case such event take place, deleted the condition of completion of evidence within 15 days. This order dated 4th January, 2020 is under challenge in the present petition.

8. Upon query by this Court as to the number of witnesses which has been examined post passing of the impugned order, learned counsel appearing for the respondent is unable to make any statement in the absence of instructions. After the order dated 4th January, 2020 this Court by order dated 5th March, 2020 requested the Trial Court to defer the hearing of the suit beyond 9th April, 2020. Learned counsel appearing for the respondents submits that due to pendency of the present petition the Trial Court did not proceed further with the suit and as such the witnesses were not examined. Even if this position is accepted, there is no justification for the Trial Court to waive the condition of 15 days which was imposed by order dated 23rd October, 2019. The Court as well as the litigants have to be mindful to the fact that only the relevant witnesses are required to be examined and under the guise of examining the witnesses, the judicial time cannot be permitted to be wasted especially when there are other deserving cases which require the attention of the Courts.

9. There is no material produced on record by the respondent-plaintiff, at the time when the application was made for setting aside the evidence close order, to demonstrate that the witnesses which were proposed to be examined were relevant witnesses and that the provision of the Order-16 of CPC were complied with.

10. Considering the above, in my opinion, the impugned order dated 4th January, 2020 deleting the condition of 15 days is clearly unsustainable. The Trial Court is expected to take into account the conduct of the party seeking indulgence. In the present case, there is no dispute that the suit of the year 2003 is going on and even after 20 years is yet to be decided. This fact is important particularly when there is a restraining order against the petitioner-defendant. The aspect of the comparative hardships ought to have been taken into consideration by the Trial Court before granting any indulgence. Unfortunately this is not being done and considering the injustice which has been resulted, I deem it fit and proper, in exercise of the powers under Article 227 of the Constitution of India, to quash and set aside the order dated 4th January, 2020.

11. By quashing of the order dated 4th January, 2020 the order dated 23rd October 2019 stands revived and the condition that the plaintiff will complete his evidence within next 15 days also stands revived.

12. The Trial Court is expected to ensure that the said condition is complied with and the witnesses, if any, are required to be examined by the respondent-plaintiff should be completed within the next 15 days.

13. In view of the above, the Writ Petition stands allowed.

[Sharmila U. Deshmukh, J.]