

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14751 OF 2022

Satish Wamanrao Zalte

.. Petitioner

Versus

Shoshana Vishnu Gaikwad and Ors.

.. Respondents

-
- Mr. B. S. Shukla a/w. Mr. J. S. Yadav for Petitioner
 - Mr. B. S. Nayak for Respondents
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 30, 2023

P.C.:

1. Heard Mr. Shukla, learned Advocate for Petitioner and Mr. Nayak, learned Advocate for Respondents.

2. Perused the impugned order dated 30.06.2022 passed by the learned City Civil Court while rejecting the draft Notice of Motion filed by the Petitioner seeking setting aside of the order dated 12.04.2022.

3. Mr. Shukla would submit that on 25.03.2022 the learned City Civil Court has passed order in Notice of Motion No.759 of 2022 making it absolute subject to payment of costs and permitting the Petitioner (Defendant in the suit) to cross examine the Plaintiff's witness i.e. P.W.No.2 on the appointed date. The Petitioner however failed to remain present on the appointed date and could not complete the cross examination of P.W.No.2. Hence in view thereof the learned Trial Court has refused to register the draft Notice of Motion filed by

the Petitioner which is at Page No.86 of the Writ Petition.

4. Mr. Nayak, learned Advocate appearing for the Plaintiffs (Respondents herein) in the Trial Court would submit that the Petitioner is a habitual delinquent and has been subjected to costs of Rs.30,000/- in the past as also cost of Rs.1,000/- by virtue of the order dated 25.03.2022. He submitted that this Court should take cognizance of these fact. That apart, he submitted, the Petitioner is protracting the trial.

5. After hearing both the learned Advocates and perusing the record of the case, I am inclined to allow the Writ Petition in terms of prayer clause (b) of the Writ Petition, which reads thus:-

*“b. this Hon’ble Court be pleased to issue a Writ of Certiorari or a writ in a nature of Certiorari or any other appropriate Writ, Order, Directions be passed under Article 227 of Constitution of India and calling for records and papers pertaining to the Judgment and Order dated 30-06-2022 passed by the Ld. City Civil Court in Draft Notice of Motion in S. C. Suit No.372 of 2011, **Exhibit - “F”** and after calling for the same, be pleased to set aside/quash the order dated 30-06-2022 and any act in furtherance thereof be recalled and/or modify/quash as this Hon’ble Court deems fit and proper and Draft Notice of Motion taken out in S.C. Suit no.372 of 2011 be allowed.”*

6. However, the Petitioner is directed to pay costs of Rs.15,000/- to the Plaintiffs and Rs.15,000/- to the Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today. Subject to payment of aforesaid costs and production of receipts by the Petitioner before the learned Trial Court, the learned Trial Court is directed to permit

the Petitioner to cross examine P.W.No.2.

7. Parties shall appear before the learned Trial Court on 06.02.2023 at 12.00 Noon with an authenticated copy of this order and thereafter on the appointed date and time fixed by the learned Trial Court for cross examination of P.W.No.2. Petitioner (Defendant therein) shall remain present and complete the cross examination as directed by the Trial Court.

8. It is further directed that once the cross examination of P.W.No.2 is completed, the Defendant shall file his Affidavit of Evidence within a period of two weeks thereafter.

9. It is clarified that if the Petitioner fails to remain present on the date and time appointed by the learned Trial Court for conducting the cross examination of P.W.No.2, the order dated 30.06.2022 shall revive.

10. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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