

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15982 OF 2022

Avishkar Realty Pvt Ltd

.. Petitioner

Versus

Namdeo Chimaji Yadav & Ors.

.. Respondents

-
- Mr. Sushil Inamdar i/by Mr. Rahul L. Nerlekar for Petitioner
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 03, 2023

P.C.:

- 1.** Heard Mr. Inamdar, learned Advocate for Petitioner.
- 2.** Perused the order dated 22.06.2022 passed by the learned Trial Court whereby the evidence of Defendants has been closed by the learned Trial Court on the ground that the Petitioner has remained absent on the dates of hearing since 26.04.2018 until 16.03.2022. Petitioner is Defendant No. 3 before the Trial Court. The said order was challenged by the Petitioner below Exh. 153 before the same Court for setting it aside. By order dated 17.10.2022, the learned Trial Court has noted that considering the delay and non-appearance of Petitioner since April 2018 as noted by the Trial Court in its order dated 22.06.2022 and the conduct of the Petitioner, Petitioner did not deserve a chance and hence, the Application below Exh. 153 came to be rejected. By filing the present Writ Petition, Petitioner has impugned both the orders i.e. orders dated 22.06.2022 and

17.10.2022 passed by the learned Trial Court.

3. Mr. Inamdar, learned Advocate for the Petitioner (Defendant No. 3) submitted that though it is true and correct that on several occasions, Defendant No. 3 and / or his witness Mr. Sushil Narayan Kaushik did not remain present before the learned Trial Court, the Defendant has a substantial case and the evidence of the Defendants should not be closed. He submitted that Petitioner be given an opportunity and put to terms.

4. Considering the fact that the aforementioned period during which the Petitioner did not remain present before the Trial Court between 26.04.2018 to 16.03.2022 was fraught with Covid-19 and on the profused submissions made by Mr. Inamdar that the Petitioner can be put to any terms whatsoever, I am inclined to consider the grievance of the Petitioner in order to enable the trial Court to have a proper adjudication of the case on merits, subject to the Petitioner paying costs of Rs. 25,000/- to the Kirtikar Law Library, High Court, Mumbai within a period of one week from today and produce the receipt of the same on the record of this petition.

5. In view of the above, both the impugned orders dated 22.06.2022 and 17.10.2022 which direct closure of evidence of Defendant No. 3 i.e Petitioner are quashed and set aside. Petitioner is directed to keep his witness Mr. Sushil Narayan Kaushik present on

09.01.2023 at 12:00 noon before the Trial Court to enable the Trial Court to fix up a date for completing his evidence and cross-examination. Mr. Inamdar after taking instructions submitted that Petitioner shall lead the evidence of only one witness i.e. Mr. Sushil Narayan Kaushik.

6. Learned Trial Court is requested to complete the evidence of the above stated witness in a time bound manner and in any event within a period of three months from today.

7. With the above direction, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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