

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 227 OF 2023

Dattatray Gajanan Soilkar

.. Petitioner

Versus

~~Chandrashhkehar Krishnaji Kadam~~

Since Deceased, Through Legal Heirs

Chitralekha Chandrashekhar Kadam and Ors.

.. Respondents

-
- Mr. Drupad Patil, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 09, 2023.

P.C.:

- 1.** Heard Mr. Patil, learned Advocate appearing for Petitioner.
- 2.** The facts in the present case reveal a shocking disclosure. That the Rojnama between 20.07.2022 and 14.11.2022 needs to be examined for the same when the matter has appeared on five occasions before the learned Trial Court.
 - (i) On 20.07.2022, the learned Judge did not preside and hence the matter was adjourned to 10.08.2022.
 - (ii) On 10.08.2022, Petitioner sought adjournment as his Advocate Shri. Phadke was outstation to which the Respondent granted his no objection. After recording this, the matter was adjourned to 08.09.2022.

- (iii) On 08.09.2022, once again the Presiding Judge remained absent and the matter was adjourned to 06.10.2022.
- (iv) On 06.10.2022, the Petitioner who is the Defendant before the learned Trial Court made an Application seeking adjournment since his Advocate Shri. Phadke was outstation. The said Application has been rejected then and there itself by order dated 06.10.2022 and consequently evidence of the Defendant is directed to be discarded and the matter is posted for final arguments by the learned Trial Court. Mr. Patil, would submit that an Application was immediately made seeking recall of the said order on the same date.
- (v) The said Application for recall was heard by the leaned Trial Court on 14.11.2022 and has been rejected stating that the Application is filed without any strong reason. The learned Trial Court has now posted the mater for final arguments since the suit is of the year 2009.

3. I have perused the record and more specifically the Roznama which is annexed as Exhibit “D” at page Nos.31 to 41 of the Writ Petition. Perusal of Roznama clearly indicates that Mr. Patil submitted that the Affidavit of evidence was filed prior to the lockdown. However, thereafter due to the imminent lockdown and the restrictions imposed, the Defendant was not in a position to remain

present. Hence, the learned Trial Court by order dated 06.06.2022 directed the Defendant to pay costs of Rs.1,800/- to the Plaintiffs. Such costs were paid and has been recorded by the learned Trial Court on 06.07.2022.

4. In view of the above facts, the view taken by the learned Trial Court in the impugned order dated 06.10.2022 and subsequent order dated 14.11.2022 is harsh and cannot be sustained due to various reasons. Considering that the learned Trial Judge himself remained absent on 20.07.2022 and 08.09.2022, the rejection of the Application is therefore harsh. It is no doubt agreed that the suit pertains to the year 2009 and all efforts are required to be made by the parties as well as the learned Trial Court to dispose of old matters, but in the process of doing so, discarding the evidence of the Defendant which has been done in the present case would not be the right cause of action.

5. In view of the above, the impugned orders dated 06.10.2022 and 14.11.2022 are quashed and set aside.

6. In the above gross facts, I do not find it necessary to issue notice. Mr. Patil fairly points out that the matter is listed for the first time. Considering the scope of the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India, I am inclined to pass the present order in the facts of the present case.

7. However, Mr. Patil informs that the next date before the learned Trial Court is on 20.01.2023. On 20.01.2023, Defendant who is himself under cross-examination shall remain present before the learned Trial Court and the learned Trial Court is directed to examine the Defendant and permit the Plaintiff to cross-examine the Defendant and complete his evidence. Considering that the suit is of the year 2009, it is directed that the learned Trial Court complete the cross-examination of the Defendant within a period two weeks from 20.01.2023 and if so required on the day to day basis.

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

[MILIND N. JADHAV, J.]

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