



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8781 OF 2015

Jaimala Manohar Rakhe
VERSUS
Rangnath Eknath Sakhare And Others

Mr. R. J. Nirmal, Advocate for the petitioner

CORAM : R. M. JOSHI, J.
DATE : 21st JUNE, 2024

PER COURT :-

1. This petition takes exception to the order dated 30th July, 2015 passed in RCS No. 62/2012, whereby the application filed by the plaintiff to set aside no evidence order dated 23rd July, 2015 is rejected.
2. Petitioner is plaintiff who has filed suit against defendants for partition and separate possession of the suit properties. Defendants appeared in suit and filed written statement. Suit is pending since 2012. After framing of issues plaintiff filed affidavit in lieu of examination in chief on 25th September, 2014, however, thereafter she remained absent and did not undergo cross-examination. Hence, order came to be passed on 12th March, 2015 closing evidence of plaintiff. Plaintiff thereafter moved an application vide Exhibit 35 on 2nd April, 2015 to set aside the said order. The said order was set aside subject to cost of Rs.500/- payable to the defendants. Thereafter on 23rd April, 2015 the defendants

completed cross examination of the plaintiff. She, however, failed to adduce further evidence. By making application dated 16th July, 2015 a request was made to adduce further evidence. This application was also allowed by way of last chance subject to cost of Rs.200/-. In spite of the order of the Trial court amount of cost is not paid by the plaintiff to the defendants. Thereafter, application Exhibit 71 came to be filed which is rejected by the Trial Court by impugned order.

3. Apart from making submission on merit, learned counsel for the petitioner informs that the proceeding before the Trial Court is fixed on 26th June, 2024. He undertakes that plaintiff will keep for witness present from that day before the Trial Court.

4. The defendants/respondents/original defendants failed to appear in this petition in spite of service of notice. This indicates that they are not interested in opposing the petition.

5. It is always in the interest of the parties to any lis that the same is decided on merit instead of technicalities. Record indicates that after order of no evidence is passed plaintiff filed application to get the said order set aside and accordingly presented herself for cross-examination. This Court finds substance in the contention of the learned counsel for the petitioner that the petitioner being lady and a villager

may have inherent limitations for attending the Court proceedings. In such circumstances, this Court finds it appropriate to allow the petition and to give one more opportunity to the petitioner/plaintiff to lead further evidence.

6. Considering the time lapsed in between and in view of the fact that there is some negligence on the part of the plaintiff in not leading the evidence, the petition is allowed subject to payment of cost of Rs.5,000/- (Rupees Five Thousand only) payable to the defendants. Hence, impugned order is set aside. Learned Trial Court to permit petitioner/plaintiff to lead evidence on next date of hearing i.e. 26th June, 2024. In the event plaintiff fails to keep her witness present before the Court on that day the right of plaintiff to lead further evidence shall stand forfeited. It would be open for the Trial Court to close evidence of plaintiff and proceed further in the suit as per law.

7. Trial Court to ascertain as to whether the cost of Rs.5,000/- as well as cost imposed by the Trial Court of Rs.200/- is paid by the plaintiff to the defendants before permitting her to lead evidence.

8. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

ssp