

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4157 OF 2019

~~Ambaji Ravaji Ghadshi~~

(since deceased) through Legal Heirs

Yashwant Ambaji Ghadshi & Ors.

.. Petitioners

Versus

Dhondiba Savaji Vhade

.. Respondent

.....

- Mr. Shantanu Patil i/by Mr. Shrikrishna Ganbavale for Petitioners

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 12, 2024

P. C.:

1. Heard Mr. Patil, learned Advocate for Petitioners.
2. By virtue of the impugned order dated 27.11.2018, the Application filed by Plaintiffs (Petitioners herein) to permit them to cross-examine the Defendant has been rejected. Precursor to the said order was an order dated 12.09.2018 on which date “No Cross” order was passed. On the Application filed below Exh. 34, the said order was set aside by the learned Trial Court on 27.09.2018 and the Plaintiffs were directed to commence with cross-examination of Defendant. However on 27.09.2018, Plaintiffs filed adjournment application as also on the subsequent date thereafter on 16.12.2018. Reason given for adjournment applications filed by Plaintiffs was that their Advocate was not available and busy in the Civil Court at Kagal,

however the learned Trial Court held against the Plaintiffs and opined that Plaintiffs were trying to prolong, protract and harass the Defendant and therefore the order dated 27.09.2018 was again invoked and the adjournment application of the Plaintiffs stood rejected. Thus by virtue of the above, the order dated 12.09.2018 stood confirmed. Being aggrieved the Plaintiffs have moved this Court by the present Writ Petition.

3. Plaintiffs cannot be non-suited by virtue of the reasons stated in the impugned order. It is clearly stated that due to absence of the Advocate representing the Plaintiffs, Plaintiffs were not in a position to cross-examine the Defendant. In that view of the matter, I am not inclined to accept the reasons given for passing the impugned order and the impugned order dated 27.09.2018 stands quashed and set aside. However, such setting aside of the order is not unconditional. Plaintiffs are directed to pay costs of Rs. 10,000/- to the Defendant within a period of two weeks from today. Payment of costs is condition precedent. If costs are paid, learned Trial Court shall take cognizance of the receipt of payment of costs and thereafter permit the Plaintiffs to cross-examine the Defendant's witness. Failing to pay costs within the stipulated period shall non entitle the Plaintiffs to commence with the cross-examination and the order dated 27.09.2018 shall stand revived.

4. Considering that the Suit is of the year 2014, learned Trial Court is directed to decide RCS No. 128/2014 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law and after allowing both the parties to lead their respective evidence. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency.

5. All contentions of the parties are expressly kept open.

6. With the above directions, Writ Petition stands allowed and disposed.

[MILIND N. JADHAV, J.]

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