

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5417 OF 2023

Sachin Ashok Jadhav and Ors.

.. Petitioners

Versus

Abhijeet Mahadev Gavande and Ors.

.. Respondents

WRIT PETITION NO.5416 OF 2023

Vadgaon Saraf Vyapari Nagari Sahakari Pat
Sanstha Ltd.

.. Petitioner

Versus

Abhijeet Mahadev Gavande and Ors.

.. Respondents

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- Mr. Swaroop Mahavir Karade, Advocate for Petitioner in Writ Petition No.5417 of 2023.
 - Mr. Rahul P. Kasbekar, Advocate for Petitioner in Writ Petition No.5416 of 2023.
 - Mr. Nikhil Narendra Pawar, Advocate for Respondent Nos.1 to 3 in both the Writ Petitions.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 13, 2024

P.C.:

1. Heard Mr. Karade, learned Advocate for Petitioner in Writ Petition No.5417 of 2023; Mr. Kasbekar, learned Advocate for Petitioner in Writ Petition No.5416 of 2023 and Mr. Pawar, learned Advocate for Respondent Nos.1 to 3 in both the Writ Petitions.

2. This is a group of two Writ Petitions disposed of by this common order.

3. Plaintiffs have filed Regular Civil Suit No.1466 of 2012 seeking declaration, injunction and partition of the Suit properties.

Trial in the Suit is pending. There is delay on the part of Defendants in conducting the Trial / witness action resultantly leading to passing of the two impugned orders. First impugned order dated 24.03.2021 is passed by the Trial Court observing as follows:-

“ While setting aside no evidence order passed against Defendants, directions were given to proceed without seeking any further adjournments since past many dates, Defendant and hi advocate again remained absent. Matter is posted for their evidence. Keep for further order against Defendant No.3, 6 to 10.”

4. From the above, it is seen that though the Trial Court gave enough opportunities to the Defendants they and their Advocates remained absent. Hence cross-examination of Plaintiffs remained to be completed for long. The Trial Court therefore closed the evidence of Plaintiffs and posted the matter for Defendants’ evidence. The above order dated 24.03.2021 is appended at page No.19. It is a handwritten order.

5. By the second impugned order dated 24.11.2021 which is also a handwritten order, the Trial Court holds as follows:-

“ Again Defendant No.3 & 6 to 10 remained absent. Their Advocate is absent. No single application on record. Defendants seem not interested to proceed with the matter. Hence, evidence of Defendant No.3 & 6 to 10 is closed. Keep for final argument.”

6. From the above it is clear that despite giving opportunity to Defendant Nos.3 and 6 to 10 to lead their evidence, they have not proceeded with the matter nor filed their evidence. Hence their evidence is also directed to be closed and the Suit is posted for final

arguments.

7. Being aggrieved, Defendant Nos.6 and 7 to 10 filed separate Applications for setting aside both impugned orders and those Applications have been dismissed by the Trial Court by two separate orders dated 24.11.2021. Hence the present Petitions have been filed by Defendant No.6 (Writ Petition No.5416 of 2023) and Defendant Nos.7 to 10 (Writ Petition No.5417 of 2023). In effect, I am hearing challenge to both the orders which directs closure of evidence of Plaintiffs and further disallows Defendants from leading their evidence.

8. I have heard Mr. Karade and Mr. Kasbekar, learned Advocates appearing for the answering Defendants – Petitioners in both Petitions.

9. The delay is writ large on the face of record. Due diligence on the part of answering Defendants is also not denied. According to Defendants, one of the principal reasons as to why they could not cross-examine Plaintiffs' witness initially was because Defendant No.3 had desired to adduce their evidence before the evidence of Defendant Nos.6 to 10. Learned Advocate would submit that there was delay on that account resultantly leading to delay on the part of answering Defendants. That apart, the ground of COVID-19 pandemic is also stated to be attributable to the delay. He finally submitted that since Defendants' are bonafide purchasers for value of the Suit property, if

the impugned orders are allowed to sustain and the final arguments are heard in the Suit, the Suit filed by Plaintiffs is likely to be decreed against Defendants. Learned Advocate for Defendants would submit that Defendants should not be non-suited due to the delay and undertakes to ensure that they will complete the Trial without any further dereliction on terms decided by this Court.

10. *PER CONTRA*, Mr. Pawar, learned Advocate for Plaintiffs would submit that delay on the part of Defendants before the Trial Court is clear and evident. He would submit that Plaintiffs are habitual offenders and despite several orders have not obeyed the orders of the Court. He would submit that answering Defendants deserve no sympathy for the delay caused by them in completing the trial. He would submit that the specific reason stated by the learned Trial Court in both the impugned orders indict the Petitioners who are the answering Defendants. According to him, such Defendants deserve no assistance from the Court. He would therefore urge the Court to sustain the impugned orders and dismiss both Writ Petitions.

11. From the record and pleadings of the present case, it is seen that if the impugned orders are upheld, the Defendants, rather the answering Defendants will be completely non-suited. No doubt, the answering Defendants have derelicted and as noted by the Trial Court despite opportunities given to them, firstly for completing cross-

examination of Plaintiffs' witness and secondly for filing their evidence, they did not do so. It is seen that both impugned orders are passed on 24.03.2021 and 24.11.2021 i.e. during the COVID-19 pandemic period. There was an imminent lockdown during the said period which must have obviously prevented the answering Defendants to conduct cross-examination of Plaintiffs' witness and also lead their evidence. Though there are other reasons which are pleaded, it is seen that the Petitioners before me are subsequent purchasers of Suit property and thus if they are denied an opportunity to conduct cross - examination, their substantial right will stand defeated and irreparable harm will be caused to them. They are purchasers of the Suit property from Defendant Nos.1 to 3.

12. In such a case, on a scale of balance of convenience if the impugned orders are sustained, it will cause irreparable harm to the answering Defendants. However, setting aside of the impugned orders cannot be unconditional since delay and prejudice caused to Plaintiffs needs to be addressed equally. In the facts of this case as delineated hereinabove, I am of the opinion that the answering Defendants deserve atleast one last opportunity, firstly to cross-examine the Plaintiffs' witness and thereafter lead their evidence in rebuttal. However, this shall be subject to the answering Defendants i.e. Petitioners before me in both the Writ Petitions paying costs of Rs.15,000/- each in both Writ Petitions to the Plaintiffs separately as a

condition precedent for setting aside and quashing the impugned orders dated 24.03.2021 and 24.11.2021. Costs as directed shall be paid by Petitioners to Plaintiffs within a period of four weeks from the date of uploading of this order. Subject to the costs paid by Petitioners, impugned orders dated 24.03.2021 and 24.11.2021 shall stand quashed and set aside. Thereafter, learned Trial Court shall permit Petitioners to cross-examine the Plaintiffs' witness without any further delay and thereafter permit the Petitioners to lead their evidence in rebuttal.

13. Considering that the Suit is filed in the year 2012, learned Trial Court is directed by this Court to decide the Suit proceedings as expeditiously as possible and in any event within a period of six months from the date of uploading this order.

14. It is clarified that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment only if it is utmost necessary.

15. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

16. All contentions of the parties are expressly kept open before the learned Trial Court.

- 17.** With the above directions, both Writ Petitions are disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]