

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8549 OF 2023

Madhav Pandurang Bhoite

.. Petitioner

Versus

Shankarrao Pandurang Bhoite since deceased
(through legal heirs)

Hanmant Shankarrao Bhoite and Ors.

.. Respondents

.....

- Mr. Yogesh Patil, Advocate for Petitioner.
- Mr. Anil Madhavrao Bhoite – Petitioner present.
- None for Respondents.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2024

P.C.:

- 1.** Heard Mr. Patil, learned Advocate for Petitioner.
- 2.** This Writ Petition is called out on request made by Mr. Patil at the time of rising of the Court.
- 3.** He would submit that by virtue by Application filed below Exhibit-155 which is at Exhibit-F, page No.153 the Application for setting aside 'no cross' order stands rejected by the learned Trial Court thus by virtue of the impugned order the defence of Defendant who is Petitioner stands completely ousted and non-suited. Perusal of the order reveals that suit proceedings is of the year 2008 and there has already been a substantial delay. It is seen that on 24.02.2022 despite

the suit proceedings having been called out repeatedly, the Defendant and his Advocate remained absent and did not present themselves leaving no option to the learned Trial Court to pass the order of 'no cross' below Exhibit-86. It is seen that the Defendants had not remained present not only on that date i.e. 24.02.2022 but even on previous occasions on 05.02.2022, 11.01.2022, 17.11.2021, 27.10.2021 and 29.09.2021. This would mean that prior to passing of the 'no cross' order on 24.02.2022 on five occasions beginning from September-2021, the Advocate for Defendant as well as Defendant remained absent.

4. Learned Trial Court has further noted that despite passing of 'no cross' order on 24.02.2022, the suit proceedings were listed thereafter on 07.03.2022, 29.03.2022, 19.04.2022, 07.06.2022 and 11.07.2022 and on these dates, Defendant and his Advocate once again remained absent. Faced with the above roznama and timeline when Application was filed below Exhibit-115, learned Trial Court rejected the Application.

5. Mr. Patil in his usual fairness would submit that Application filed on dated 24.01.2023 which is at Exhibit-D, page No.35 of the Writ Petition. He has taken me through the Application and would contend that due to reasons mentioned in the Application and more specifically in paragraph No.2 thereof as also because of dereliction of

the Advocate of Defendant, Defendant may not be penalised. He would submit that the 'no cross' order would be extremely harsh and prejudicial to the Defendant in the facts of the present case as valuable opportunity would be lost to the Defendant. Once again in his usual fairness Mr. Patil draws my attention to the Affidavit-in-Reply filed by Plaintiff which is at page No.41. This Affidavit-in-Reply is dated 13.02.2023. He would submit that in paragraph No.5B of same Plaintiffs have stated that due to non representation of the Defendant on various dates as also by his Advocate they have suffered by having made to attend the Court time and again and therefore the Court should levy costs of Rs.10,000/- on the Defendant.

6. This Court incidentally is not hearing the suit for seeking damages and not considering any appeal against any damages but it is such grievance expressed by the Plaintiffs in their reply. While considering the Application and Affidavit-in-Reply as also the impugned order, the Defendant is present in Court in-person and he has given instructions to Mr. Patil. After going through the aforesaid pleadings, I have also directed Mr. Patil to take instructions as to whether the Defendant is ready and willing to pay costs suffered by the Plaintiffs and as stipulated in the Affidavit-in-Reply so as to enable this Court to consider the present Writ Petition against the impugned order dated 02.03.2023.

7. After taking instructions from Defendant Mr. Anil Madhavrao Bhoite, Mr. Patil would submit that Defendant is agreeable to pay costs of Rs.10,000/-. It is seen that Plaintiff- Shankarrao Pandurang Bhoite is since deceased and is now survived by his five legal heirs namely Respondent Nos.1A to 1E who are Plaintiff Nos.1A to 1E. The 'no cross' order is set aside and the impugned order is also set aside in the interest of justice subject to payment of costs of Rs.10,000/-. It is therefore directed that the aforesaid costs of Rs.10,000/- shall be paid by Defendant - Mr. Anil Madhavrao Bhoite to Plaintiff Nos.1A to 1E namely Hanmant Shankarrao Bhoite, Yashwant Shankarrao Bhoite, Shivaji Shankarrao Bhoite, Shambhaji Shankarrao Bhoite, Poonam Kantilal Chavan @ Rs.2,000/- each as condition precedent to set aside the 'no cross' order dated 22.04.2022. Once the aforesaid costs are paid to Plaintiffs by Defendant appropriate receipt be placed to the satisfaction of the Trial Court and if costs are paid then the order dated 24.02.2022 shall stand quashed and set aside. If costs are paid as directed by this Court, the learned Trial Court shall allow Defendant to cross examine the Plaintiffs' witness by fixing the schedule for hearing and witness action as expeditiously as possible considering that the suit is of the year 2008. It is therefore directed that Trial Court shall ensure disposal of Regular Civil Suit No.85 of 2008 within a period of six months from today strictly in accordance with law and ensure parties are not given adjournments unless they

are utmost necessary. This Writ Petition is allowed in the above terms and impugned order dated 02.03.2023 is quashed and set aside.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
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