

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1176 OF 2023

Sanjay Mahadev Powar & Ors.

.. Petitioners

Versus

Laxmi Anandrao Powar & Ors.

.. Respondents

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- Mr. Rohit Shevate for Petitioners
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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 19, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 19.06.2024.
3. Heard Mr. Shevate, learned Advocate for Petitioners.
4. Present Writ Petition takes exception to the order dated 20.04.2022 passed by the learned Trial Court in Regular Civil Suit No. 151/2016 rejecting the Application of Defendants for setting aside “No-cross order”. The only ground stated in the order dated 20.04.2022 is that sufficient opportunity is given to the Defendant but the said Defendant has protracted the matter and considering his absence, the Application stood rejected. It needs to be reiterated that the said Application was made during Covid-19 pandemic period and therefore in all probability the learned Trial Court ought to have considered the fact that prosecuting the matter on the Application of

the Defendant would undoubtedly be a difficult proposition. Same is evident from the date on which the said Application has been made. Be that as it may Defendant cannot be non-suited and ousted by allowing the impugned order dated 20.04.2022 to sustain.

5. After perusing the Application filed by Defendant and the reasons stated in paragraph Nos. 2, 3 and 4 which specifically highlights the issue of Covid-19 pandemic having affected the parties, I am inclined to allow the said Application and set aside the order dated 20.04.2022.

6. In view of the above observations, the impugned order dated 20.04.2022 is quashed and set aside resultantly allowing the Application filed below Exh. 41 dated 11.04.2022. Learned Trial Court shall proceed with conducting cross-examination of the Plaintiff which will be done by Defendants.

7. I am informed that the Suit has remained stagnant in the meanwhile in view of the proposed settlement between the parties which has not been worked out. If that be the case, Suit shall be proceeded strictly on merits and in accordance with law. The order of staying the Suit proceedings is vacated.

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

[MILIND N. JADHAV, J.]