

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2259 OF 2024

Kshetra Goraknath Math Cheravali
Through Yogi Balanath Guru Kisannath Maharaj .. Petitioner

Versus

State of Maharashtra and Ors. .. Respondents

-
- Mr. Rajesh S. Datar a/w. Mr. Akshay J. Kandarkar, Advocates for Petitioner.
 - Mr. Y.D. Patil, AGP for Respondents – State.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 23, 2024.

P.C.:

1. Heard Mr. Datar, learned Advocate for Petitioner and Mr. Patil, learned AGP for Respondents – State.

2. Present Writ Petition takes exception to the order dated 02.11.2023 passed on Application below Exhibit “88”. That Application was filed for setting aside of the order dated 14.09.2023 whereby the Counsel for the Plaintiff did not remain present and hence right of further cross-examination was declined.

3. Mr. Datar would submit that the Suit is filed in the year 2012. Plaintiff's entire witness action is over, whereas the Defendant's witness action was going on and it is in the middle of cross-examination that due to non availability of the Counsel representing the Plaintiff, the order dated 14.09.2023 was passed.

4. It is seen that on that very date, immediately an Application was filed below Exhibit “88” by the Plaintiff for setting aside of the said order. That Application has been rejected on 02.11.2023 i.e. after two months, leading to the filing of the present Writ Petition. Though the Petitioner i.e. Plaintiff has been held for dereliction on a previous occasion also in respect of order passed under Exhibit “84” for neglecting to deposit the costs of Rs.500/-, that should not and cannot be held against the Petitioner / Plaintiff as his right to complete cross-examination of the witness of Defendant No.5 is an extremely valuable right and if denied, the case of Plaintiff will be severely prejudice and more specifically when it is concerned with ongoing witness action. Plaintiff will be non-suited if the impugned order is upheld. Justice will not be served. It is agreed that there is delay on the part of the Plaintiff. In that view of the matter, the impugned order dated 02.11.2023 is harsh and therefore not sustainable and quashed and set aside. Resultantly allowing the Application filed below Exhibit “88” by the Plaintiff and setting aside of the order dated 14.09.2023 is with subject to payment of costs of Rs.3,500/- to the Defendant No.5. Payment of costs shall be a condition precedent and only after the said costs are paid, the learned Trial Court is directed to permit continuation with the pending cross-examination of Defendant No.5’s witness and complete the witness action strictly in accordance with law.

5. Mr. Datar, learned Advocate for the Petitioner / Plaintiff would submit that the above costs shall be positively paid over to Defendant No.5 within a period of two weeks from today. Receipt of payment of costs shall be ascertained by the learned Trial Court from Defendant No.5 who is also directed to remain present before the learned Trial Court on the next adjourned date for completing the cross-examination of the witness of Defendant No.5.

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

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE

Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2024.02.23
19:47:06 +0530