

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3392 OF 2024

D. Dhinakaran

.. Petitioner

Versus

M/s. Kiran Insulated Wire Industries

.. Respondent

-
- Mr. O. R. Tiwari a/w. Ms. Roseline R. Nadar, Advocates for Petitioner.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 11, 2024

P.C.:

1. Heard Mr. Tiwari, learned Advocate for Petitioner / Defendant before the Trial Court.

2. The objection raised by the Petitioner is two fold. Order dated 02.12.2023 in Special Civil Suit No.7 of 2017 has been passed which is appended at two places in the Writ Petition.

3. Firstly handwritten order on Application to grant permission to file detailed say on admissibility and denial of the documents has been rejected on the ground that the case is more than 7 years old and there is no sufficient reason for granting further time.

4. Mr. Tiwari would submit that Plaintiff has relied on 35 documents and subsequently placed these 35 documents on record on 27.09.2021 and 27.09.2022 which was objected to by the Defendant. He would submit that these 35 documents were served upon the Defendants much later thereafter. In that view of the matter,

Defendant filed Application dated 02.12.2023 which was taken on record below Exhibit-44/D by the learned Trial Court, but the said Application was rejected. Read with this order there is the second order dated 02.12.2023 appended at page No.83 of the Writ Petition.

5. Mr. Tiwari would submit that by virtue of this order dated 02.12.2023 which is a printout from the website of 'eCourts Services' of the Court, it is seen that learned Trial Court has marked these 35 documents as Exhibit Nos.45 to 77 but had also proceeded to pass an order of 'no cross' against Defendant. By this he would mean that Defendant is now precluded from cross-examining the Plaintiff's witness on these documents and Plaintiff's case. Rather he would submit that Defendant's right to cross-examine the Plaintiff is taken away.

6. *Prima facie* there is no specific direction as this Court can understand and find from the impugned order that Petitioner is precluded from cross-examining the Plaintiff's witness. Once the documents are marked by the learned Trial Court to which only objection raised by Mr. Tiwari is that his say dated 02.12.2023 ought to have been taken on record, it is seen that the 35 documents which have been marked by the learned Trial Court are either original copies / certified copies of the invoices borne out from the ledger account between the parties or copies of Court proceedings and

correspondence between the parties.

7. In that view of the matter, the order passed by the learned Trial Court exhibiting these documents as Exhibit Nos.45 to 77 cannot be faulted with. Once the documents are marked as Exhibits, the right of the Defendant to cross-examine enures. That right cannot be taken away despite the Defendant being present.

8. Mr. Tiwari would submit that Defendant would like to cross-examine the Plaintiff's witness on the basis of the objections and say filed by the Defendant in his Application of say dated 02.12.2023. He is aggrieved with the fact that the said Application dated 02.12.2023 filed on behalf of the Defendant has been rejected by the learned Trial Court and not taken on record.

9. I have impressed upon Mr. Tiwari that assuming for the sake for argument that even if the said say is taken on record, still the Defendant will have to effectively cross-examine the Plaintiff's witness in witness action. By cross-examining, I mean that Defendant will have to effectively cross-examine the Plaintiff's witness on the said documents which are exhibited below Exhibit Nos.45 to 77 and Plaintiff's Affidavit-in-lieu of examination-in-chief. The right to cross-examine is a very valuable right of the Defendant and in event if the said right is denied it will amount to non-suiting the Defendant from the subject matter of the suit proceedings. Defendant is desirous and

willing to cross-examine the Plaintiff's witness. Hence, in that view of the matter, order which records that 'proceed no cross against defendants' which according to Mr. Tiwari, disallows the Defendant to cross-examine the Plaintiff's witness is quashed and set aside. Learned Trial Court is directed to allow and permit the Defendant to cross-examine the Plaintiff's witness on documents at Exhibit Nos.45 to 77 strictly according to the provisions of the Indian Evidence Act, 1872 and strictly in accordance with law. In view of the above, the hand written order dated 02.12.2023 is not required to be dealt with by this Court considering that the said 35 documents have already been marked by the Trial Court.

10. It is informed by Mr. Tiwari that the next date before the learned Trial Court is 16.03.2024. Both the parties are directed by this Court to remain present before the Trial Court and on that date and learned Trial Court shall determine the schedule for cross-examination of the Plaintiff's witness without any further delay.

11. In view of the fact that the suit is more than 7 years old, the learned Trial Court is directed by this Court to dispose of the said suit proceedings as expeditiously as possible and in any event preferably within a period of one year from today strictly in accordance with law.

12. With the above directions, Writ Petition stands disposed.