

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6072 OF 2024

Amol Vijay Suryawanshi

.. Petitioner

Versus

Sarjerao Dinkar Jadhav (since deceased)
through Legal Representative Jaywant Sarjerao
Jadhav and Ors.

.. Respondents

- Mr. Vishal Mohan Dhamal, Advocate for Petitioner.

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 29, 2024

P.C.:

- 1.** Heard Mr. Dhamal, learned Advocate for Petitioner.
- 2.** This Writ Petition is filed by way of e-filing.
- 3.** The impugned order dated 06.11.2023 is passed by the learned Trial Court in Application filed below Exhibit-182 in Special Civil Suit No.82 of 2006. By virtue of the impugned order, Application filed below Exhibit-182 stands rejected.
- 4.** Plaintiff files Special Civil Suit No.82 of 2006 for specific performance of Agreement against the Defendants. Suit is pending for the past 18 years. Stage of suit is that Plaintiff has completed witness action of two of his witnesses namely PW Nos.1 and 2 and now belatedly Plaintiff desires to lead witness action of his further witnesses. Considering the delay that was involved, learned Trial

Court by its order dated 11.02.2019 which is at page No.24 of the Writ Petition recorded as under:-

“No further evidence is adduced by Plaintiff.

Hence, evidence of Plaintiff side is here by closed.”

5. Thereafter in 2020, COVID-19 Pandemic lockdown was in place. Plaintiff filed Application under Exhibit-182 on 06.11.2023 before the learned Trial Court for setting aside of the above order dated 11.02.2019. Copy of that Application is at Annexure – A, page No.17 of the Writ Petition. In that Application, Plaintiff pleaded that due to intervening circumstances, namely COVID-19 Pandemic lockdown, as also, death of Advocate representing Plaintiff at that time, Plaintiff was not able to file Application for setting aside of the order dated 11.02.2019, resultantly leading to Plaintiff being denied the opportunity of leading complete evidence.

6. In that Application, Plaintiff has also appended names of his additional three witnesses that he desires to lead evidence of in witness action. Two of the witnesses are witnesses of facts whereas the third witness is an Advocate who is a notary. When being put a question as to why Plaintiff desires to lead evidence of the Advocate in the suit pertaining to specific performance, he would submit that he has notarised the document. It is seen that the document pertains to

immovable property and in that view of the matter, the fact whether the said notary has notarised the said document would not be relevant, since the document is not registered at all. It will have its own consequences in law.

7. Be that as it may, parties would assert and deny their legitimate rights under the said document and lead evidence.

8. On the aspect of delay, *prima facie*, Mr. Dhamal would submit that there is delay of about four years. However, the same may not be true since the benefit of COVID-19 Pandemic period will be available to the Applicants from 20.03.2020 to 28.02.2022 and exclusion of this period would therefore render the delay to be little less than two years.

9. Mr. Dhamal after taking instructions would submit that Affidavit-in-lieu of examination-in-chief of the 3rd witness namely Ganesh Laxman Bobde has already been filed on record of the Trial Court whereas he undertakes to file Affidavit-in-lieu of examination-in-chief of fourth witness namely Sarjerao Appa Shinde within a period of two weeks. It is directed that until Affidavit-in-lieu of examination-in-chief of Sarjerao Appa Shinde is filed before the Trial Court as stated herein above, witness action of PW No.3 – Ganesh Laxman Bobde shall not commence before the Trial Court.

10. Plaintiff has withdrawn the name of his fifth witness namely Narayan V. Rokade (Notary). In view of the above observations and

findings, the impugned order dated 06.11.2023 needs to be interfered with and is quashed and set aside. Copy of Affidavits-in-lieu of examination-in-chief of PW-4 shall be served on the Defendants within 2 weeks and also filed in Court. Defendants shall be given adequate opportunity to cross-examine Plaintiff's witnesses. After Plaintiff's witnesses evidence is over, Defendants witness action shall commence before Trial Court.

11. Considering that the suit is of the year 2006, learned Trial Court is requested by this Court to dispose of Special Civil Suit No.82 of 2006 as expeditiously as possible and in any event within a period of six months from today. Parties are directed not to take any unnecessary adjournments. Parties to co-operate with the learned Trial Court. Trial Court is directed to give adjournments to the parties only if they are utmost necessary due to any emergency or exigency.

12. In view of the above, order dated 11.02.2019 of closure of evidence of Plaintiff is quashed and set aside, thereby allowing Plaintiff to allow filing of Affidavits-in-lieu of examination-in-chief of his two further witnesses as directed hereinabove. The above order is passed subject to Plaintiff paying costs of Rs.5,000/- each to the legal heirs of deceased Defendant No.1 and the Defendant No.2 separately. Defendant No.1 having expired, his costs shall be apportioned between his legal heirs who are on record. Receipt of payment of costs shall be

placed before the Trial Court. Costs shall be paid within a period of four weeks from today.

13. The Trial Court shall take cognizance of this order. On 10.06.2024, parties are to appear before the Trial Court with a server copy and place the same before the Trial Court alongwith receipt of payment of costs. Needless to state that this Court has not opined on the merits of the case and the learned Trial Court shall proceed with Special Civil Suit No.82 of 2006 strictly in accordance with law and decide the said suit on its own merits. All contentions of both the parties are expressly kept open.

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

H. H. SAWANT

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[MILIND N. JADHAV, J.]