

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.13490 OF 2024

Shibu Saha

Petitioner

.. (Original Defendant)

Versus

Nasim Ahmed Shaikh

Respondent

.. (Original Plaintiff)

-
- Mr. Adil Parasrampuriah a/w. Hon Suhas, Mr. Saurabh Srivastava and Mr. Shreyas Srivastava, Advocates for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : MAY 06, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Parasrampuriah, learned Advocate for Petitioner.
- 3.** Perused the praecipe dated 06.05.2024 and the Writ Petition.
- 4.** The impugned order is passed on 24.04.2024 in Commercial Suit No.459 of 2020. This order forecloses witness action of Defendant in view of absence of Defendant who was supposed to appear or rather come from Calcutta or depose as witness before the Trial Court.
- 5.** Briefly stated suit is for recovery of an approximate amount Rs.80 Lakhs. Witness action of Plaintiff has been completed and it was Defendant's turn.

6. Mr. Parasrampurua has drawn my attention to the medical certificate expressly produced before the learned Trial Court which is appended at page No.372 of the Writ Petition. I have perused the said medical certificate.

7. In that view of the matter, the impugned order dated 24.04.2024 which is at page No.388 of the Writ Petition which forecloses the evidence of Defendant is extremely harsh and deserves to be quashed and set aside.

8. There is one aspect which needs to be addressed however. One of the reason given by learned Trial Court is that Defendant has repeatedly sought adjournment and failed to adduce evidence and in that view of the matter, learned Trial Court has forfeited the Defendant's right to adduce evidence.

9. In order to avert any further delay Defendant is directed to remain present before Trial Court day after tomorrow i.e. on 08.05.2024 since suit is listed before the Trial Court on 08.05.2024. Defendant is directed to remain present on that date for witness action.

10. Needless to state that learned Trial Court may be at liberty to take witness action on that date or fix any further date at its discretion and which ever date which shall be fixed, the Defendant shall remain present on that adjourned date. After taking instructions

from Defendant, this statement made by Defendant is recorded as an undertaking given to this Court through the Advocate for the Defendant.

11. In view of the above, the impugned order dated 24.04.2024 stands quashed and set aside and Defendant's prayer to complete witness action stands allowed as per directions given hereinabove.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

Digitally signed
by HARSHADA
HANUMANT
SAWANT
Date: 2024.05.06
15:32:13 +0530