

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15564 OF 2023

Veena Nagar CHS Ltd.

.. Petitioner

Versus

State of Maharashtra and Ors.

.. Respondents

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- Mr. Anand Mishra i./by Mr. Ashok M. Saraogi, Advocate for Petitioner.
- Mr. Siddharth Murarka a/w. Ms. Hitasvi Sanghavi i./by Law Chamber of Siddharth Murarka, Advocate for Respondent Nos.2 to 6.
- Mr. Y. D. Patil, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 05, 2024

P.C.:

1. Heard Mr. Mishra, learned Advocate for Petitioner, Mr. Murarka, learned Advocate for Respondent Nos.2 to 6 and Mr. Patil, APP for Respondent – State.

2. After hearing Mr. Saraogi on 03.01.2024, this Court passed the following order:-

“1. I have heard Mr. Saraogi, learned Advocate appearing for the Petitioner who appears in person on behalf of Petitioner – Society since he is the Secretary of the Society. The impugned order dated 30.11.2023 is at Exhibit-A, page No.23 whereby Notice of Motion No.4062 of 2023 filed by Defendant Nos.1 to 4 in the Civil Suit stands allowed and certain directions for witness action are given which affect the Petitioner who is Defendant No.5 before the learned Trial Court.

2. Mr. Saraogi has taken me through the gamut of the proceedings. He would fairly inform the Court that the witness of the Society has not been cross-examined by the Defendant Nos.1 to 4. However he would further submit that in the

companion suit filed by Defendant Nos.1 to 4 they have lead their evidence and Society has cross-examined their witness extensively. Both the suits were heard and listed for hearing.

3. However at this stage Defendant Nos.1 to 4 filed Notice of Motion seeking to examine the witness of the Society in the first suit filed by the Society. One of his submission is that once Defendant Nos.1 to 4 have lead their evidence in the companion suit it would not be open to them to recall the witness of Society for cross-examination since it would amount to improving the Defendant Nos.1 to 4's case in evidence and such an application would therefore not be maintainable.

4. I have seen that on 13.12.2023 proceedings in the Trial Court in respect of both suits have been stayed. The said order shall continue further till this Petition is heard.

5. Copy of this order and notice of listing the matter on 05.01.2024 shall be served on the Advocates appearing for the concerned contesting Respondents by the Advocate for the Petitioner.

6. Stand over to 05th January, 2024."

3. Today Mr. Saraogi assisted by Mr. Mishra, learned Advocates appeared for the Petitioner in the morning session and Mr. Murarka, learned Advocate appeared for the private Respondents. The matter was heard in the afternoon session also. Both the learned Advocates in their usual fairness have considered the order passed on 03.01.2024. With their able assistance I have perused the impugned order dated 30.11.2023 at Exhibit-A, page No.23 to the Writ Petition. I have also considered the operative part of the order on page No.28 of the Writ Petition.

4. The Defendant No.5 – Society (Petitioner herein) represented by Mr. Saraogi before the Trial Court has agreed to step into the witness box and Mr. Murarka, learned Advocate appearing for

the Plaintiff in the suit proceedings (Respondent herein) has agreed and is permitted to cross-examine the witness of the Defendant No.5 – Society.

5. In effect, the order dated 30.11.2023 stands upheld without opining anything on merits of the matter.

6. Mr. Saraogi has urged this Court to consider the aspect of delay and prolongation of the witness action and nothing more. Equally, Mr. Murarka would inform that on 11.01.2024 the next date is fixed before the Trial Court, but he needs some time to prepare for cross-examination of the witness of Defendant No.5 and he undertakes to begin the cross-examination within a week's time thereafter on 18.01.2024 and if on that date he is not finished with the cross-examination he would assure the Court that in any event he would before 08.02.2024 complete the entire cross-examination of the Defendant No.5's witness. The stand adopted by Mr. Murarka is acknowledged by the Court and it is impressed upon him that there shall be no further prolongation of the witness action due to his unavailability, since the witness of the Defendant No.5 has appeared-in-person before me and assured his presence at all times before the Trial Court.

7. In view of the above, keeping in mind that the learned Trial Court would also have to deal with other similar several matters and

also matters related with witness action, the learned Trial Court Judge is requested by this Court to list the cross-examination of the witness of the Defendant No.5 on 18.01.2024 and thereafter take a decision on the basis of what transpires on 18.01.2024 and fix further dates and complete the entire witness action by 08.02.2024.

8. Mr. Murarka in fairness would submit that he would require a minimum of three sessions to complete the cross-examination and in that view of the matter, I leave it to the complete discretion of the learned Trial Judge to decide the future dates after 18.01.2024. Mr. Murarka makes a request to the Court that he has no impediment in conducting the cross-examination on 18.01.2024 followed by 25.01.2024 and 01.02.2024 but such an Application be made only before the learned Trial Judge for consideration as per his convenience.

9. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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