

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5470 OF 2024

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Ajit Singh Twinder Singh Anand

.. Petitioner

Versus

Biharilal Kishanchand Milwani and ors.

.. Respondents

.....

- Mr. Anil R. Mishra, for the Petitioner.
- Mr. Kantilal H. Kanojia a/w Ms. Jyoti A. Kanojia, for Respondent No.1.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 16, 2024

P. C.:

1. Learned Counsel Mr. Mishra has drawn my attention to the written statement of Defendant Nos. 1 to 4 filed in a Suit which is appended at page no. 50 to the Writ Petition and would contend that the affidavit of the evidence filed on behalf of the Defendant Nos. 1 to 3 which is appended at page no. 115 to the Writ Petition is in consonance with the written statement. I have perused the same in order to understand the submissions and arguments made by Mr. Mishra.

2. *Prima facie*, I am of the opinion that affidavit of evidence filed by the Defendant Nos. 1 to 3 is beyond the pleadings as stated in the written statement. Mr. Mishra would next argue that discarding the entire affidavit of evidence is arbitrary. Mr. Mishra may be right in his

submission, but it is for him to therefore convince the Court as to which are those paragraphs in his affidavit of evidence which runs from pages 115 to 146, which the Plaintiff would like to submit that they are in consonance with the pleadings in the written statement. Mr. Mishra is however unable to do so even before me.

3. In that view of the matter, Mr. Mishra takes instructions from the Petitioner and informs the Court that if an opportunity is given to the Defendants to file an appropriate affidavit of evidence in consonance with the pleadings in the written statement, the Defendants will do so. This is a fair suggestion made by Mr. Mishra, while sustaining the impugned order.

4. Insofar as the affidavit of evidence appended at page no. 115 is concerned, the same is discarded giving liberty to Defendant nos. 1 to 4 to file an appropriate affidavit of evidence which shall be in consonance with the written statement filed by Defendants Nos. 1 to 4 dated 15/02/2013. Learned Trial Court shall permit the Defendants to file a fresh affidavit of evidence as directed above. However, once that affidavit is filed, the parties to the Suit shall be heard by the Trial Court before considering the same in accordance with law.

5. Needless to state that all contentions of parties are expressly kept open.

- 6.** Writ Petition is disposed of in the above terms.
- 7.** Considering that the Suit has already been expedited, the trial Court shall determine and decide the Suit as expeditiously as possible and in any event within a period of 6 months from today.

Urmila Ingale

[MILIND N. JADHAV, J.]