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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6429 OF 2024**

Hiren Jaswant Rajani

.. Petitioner

**Versus**

M/s. Evershine Builders Pvt. Ltd.

.. Respondents

- .....
- Ms. Pushpa Ganediwala a/w. Ms. Aafreen S. Shaikh, Mr. Anshu Agrawal and Mr. Ankit Rathod h/f. Ms. Krupali H. Rajani, Advocates for Petitioner.
  - Mr. Karl Tamboly a/w. Mr. Karan Bhalla and Mr. Mani Thevar i./by Ganesh & Co., Advocates for Respondent.
- .....

**CORAM : MILIND N. JADHAV, J.**

**DATE : JULY 31, 2024.**

**P.C.:**

**1.** Heard Ms. Ganediwala, learned Advocate for Defendant No.6 in the Suit proceedings who is the Petitioner before me and Mr. Tamboly, learned Advocate for the Plaintiff in the Suit proceedings who is the Respondent before me.

**2.** With the able assistance of both the learned Advocates, perused the pleadings and acquainted myself with the facts of the present case. Impugned order dated 04.04.2024 is the subject matter of challenge in the present Writ Petition. It is passed in Application below Exhibit “243” is filed by Defendant No.6. It is contended by Defendant No.6 that the witness of the Plaintiff be recalled for conducting cross-examination afresh on an additional issue which is

framed by the learned Trial Court by passing an order below Exhibit “231”. She would submit that the date of that order framing the additional issue is 01.04.2024. She would next draw my attention to the fact that the cross-examination of the Plaintiff’s witness was completed on 19.06.2023. What is significant to be noted here is that issues were originally framed on 18.12.2017, thereafter further additional issues were framed on 26.04.2023 and thereafter another additional issue was framed on 01.04.2024.

**3.**        *PER CONTRA*, Mr. Tamboly, learned Advocate for Respondent would inform the Court that the findings returned by the learned Trial Court in paragraph No.5 be examined by the Court in order to ascertain as to whether the additional issue which has been framed 01.04.2024 has been duly covered by Defendant No.6 during his cross-examination as also in his pleadings before the Court.

**4.**        He would submit that there is a clear finding returned by the learned Trial Court to that effect that when cross-examination of the Plaintiff’s witness took place on the original issues and the additional issues, substantial questions were asked in cross-examination by the learned Advocate on behalf of Defendant No.6 with respect to the additional issue which was framed subsequently on 01.04.2024. Though, Mr. Tamboly is right and on perusing paragraph No.5 of the impugned order, *prima facie*, it appears so, but a substantive right of

Defendant No.6 to cross-examine the Plaintiff's witness on the issue that has been framed subsequent to the completion of his cross-examination stands defeated in this case. If I have to accept the submissions of Mr. Tamboli that substantial questions on the additional issues have been asked during the previous round of cross-examination, at that time Defendant No.6 did not have the benefit of the additional issue.

**5.** In view of the above submissions and on perusing the pleadings, it is seen that the facts in the present case are required to be delineated so that the present order can be passed specifically.

**6.** The Suit is filed by M/s. Evershine Builders Pvt. Ltd. in the year 2010 which is nomenclatured as Special Civil Suit No.11 of 2010 seeking specific performance of MOU dated 01.06.1996 as well as another Agreement dated 26.08.1997. Necessity for filing the Suit was due to termination notice issued by Defendant in the year 2009. Originally, there were 9 Defendants to the Suit proceedings. Defendant No.6 being one of them. It is seen that during the interregnum, save and except Defendant No.6, other Defendants settled the Suit proceedings by filing Consent Terms which were taken on record below Exhibit "145" some time in the year 2012. This is an admitted position.

**7.** However, Ms. Ganediwala points out to the Court that subsequent thereto since those CT regarding the Defendants who have settled the matter were not being abided by Respondent No.1 – Developer, hence some of the Defendants approached the Trial Court seeking cancellation of the Consent Terms as also for passing further orders in view of the fresh Consent Terms. This submission may not be germane for the decision in the present Writ Petition. Here, I am concerned with only the right of Defendant No.6 which has been pleaded before me by Ms. Ganediwala qua the impugned order and more specifically with respect to the findings returned in paragraph No.1 of the impugned order. As noted above, issues were framed in the year 2017, thereafter additional issues were framed in 2013 and finally one additional issue was framed on 01.04.2024. It is with respect to this one additional issue that the Defendant No.6 filed Application below Exhibit “243”. Though the Application below Exhibit “243” also touches upon several other issues and other questions of facts, they are not germane for deciding the present Petition.

**8.** I have impressed upon Mr. Tamboly that in the event if Defendant No.6 has been denied an opportunity to cross-examine the Plaintiff's witness on the additional issue then in that case the Application filed by Defendant No.6 is proper. In his usual fairness after taking instructions he has informed the Court that considering the timeline in the present case as also by virtue of the impugned order

and construction of the Plaintiff having been halted due to stay on the Suit proceedings it is detrimental to the Plaintiffs' prospects, but appropriate order be passed by the Court.

**9.** Considering the aforesaid observations, I fully understand the grievance expressed by Mr. Tamboly and therefore express and specific directions are needed to be passed in the present Writ Petition.

**10.** In view of the above observations and findings, it is directed that the Plaintiff's witness shall remain present for cross-examination by the Advocate for Defendant No.6 before the Trial Court on 07.08.2024 which incidentally is the next date fixed before the Trial Court. On that date, Advocate for Defendant No.6 shall be permitted by the Trial Court to cross-examine the Plaintiff's witness on the additional issue which has been framed under Exhibit "231" and nothing more.

**11.** It is clarified that Defendant No.6 and / or his Advocate shall not seek any adjournment on that date unless due to any *force majeure* reason and not otherwise. This order is required to be passed considering that the Suit is remained pending since 2010.

**12.** All contentions of Defendant No.6 and Plaintiff are expressly kept open without opining on any merits of the matter which shall be noted by the parties.

**13.** With the above directions, the impugned order dated 04.04.2024 stands quashed and set aside.

**14.** Copy of this order shall be placed before the learned Trial Court on 2<sup>nd</sup> August 2024, so that the learned Trial Court is apprised that the witness action of the Plaintiff's witness will be commenced by learned Advocate for Defendant No.6 on 07.08.2024 and if it is possible shall be completed on that date or if the cross-examination is not completed on that date, the learned Trial Court shall conduct the same on a day to day basis till it is completed.

**15.** In view of the above timeline, I am also inclined on the request made by Mr. Tamboly to expedite the Suit proceedings. The SCS No.11 of 2010 which is filed by the Plaintiff is directed to be decided by the learned Trial Court as expeditiously as possible and in any event within a period of four (4) months from today.

**16.** It is directed that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment only if it is utmost necessary. Granting of adjournment shall be exclusively at the discretion of the learned Trial Court which shall be noted and without seeking any further extension, Suit shall be decided as directed herein above.

**17.** Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

**18.** With the above directions, Writ Petition is disposed.

**[ MILIND N. JADHAV, J. ]**

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