

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9120 OF 2024

Jayant Jamnadas Somaiya

... **Petitioner**

Versus

Hemant Ramakant Joshi and Ors.

... **Respondent**

Mr. Vishwajeet Kapse i/b Mr. Bhairvanath N. Jadhav for the Petitioner.

Mr. Kalpesh Joshi a/w Ms. Nisha Shah & Mr. Amar Parab i/b Mr. Kalpesh Joshi Associates for the Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

DATE : 8 JULY 2024.

P.C. :

1) It must be observed at the very outset that the Petitioner/Defendant No.13 is rather negligent in defending the suit. Petitioner wants to rely upon Permanent Alternate Accommodation Agreement (**PAAA**) dated 9 November 2015 and initially produced only certified copy thereof. The document was apparently not marked in evidence on account of non production of the original, which is admittedly in Petitioner's possession. Petitioner thereafter filed an Application at Exhibit

140 seeking permission to lead evidence in respect of the said PAAA for its marking in evidence. The Trial Court accordingly granted an opportunity to the Petitioner to conduct further examination in chief for the purpose of marking of the said PAAA by Order dated 28 June 2023. This opportunity was not availed by the Petitioner who failed to conduct his further examination in chief and permitted the Plaintiff to cross-examine him. It is only at the stage where the suit was taken up for arguments that Petitioner was advised to file Application at Exhibit 150 for marking of the said document in evidence, by seeking further examination in chief. The application is rightly rejected by the Trial Court by imposing costs of Rs.5,000/-.

2) I have heard Mr. Kapse, the learned counsel appearing for the Petitioner and Mr. Joshi, the learned counsel appearing for the Plaintiff/Respondent No.1.

3) Perusal of the Plaint would indicate that the PAAA dated 9 November 2015 is under challenge and its marking in evidence would benefit both the parties. Marking of PAAA dated 9 November 2015 would enable Plaintiff to effectively press prayer clause 'b (2)' in the Plaint. It is only on account of this factor that an indulgence is being shown to the Petitioner despite his repeated negligent conduct.

4) Plaintiff does not dispute the existence of PAAA dated 9 November 2015 and in that view of the matter, there appears to be no impediment in marking the said document in evidence.

5) Writ Petition is accordingly disposed of with a direction to the Small Causes Court to mark and read PAAA dated 9 November 2015 in evidence. For his negligent conduct, the Petitioner shall pay costs of Rs.15,000/- to the Plaintiff in addition to costs already imposed by the Trial Court within a period of two weeks from today.

[SANDEEP V. MARNE, J.]