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

WRIT PETITION NO. 9211 OF 2024

Amrutlal Kededin Pandey

.. Petitioner

Versus

Sitaram Ramcharitar Pandey and Ors.

.. Respondents

-
- Mr. Manish Jain a/w. Ritu G. Gehlot and Mr. Pravin Labdhe i/by
S.M. Jain Associates for the Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : JULY 09, 2024.

P.C.:

- 1.** Heard Mr. Jain, learned Advocate for Petitioner.
- 2.** The order dated 01.02.2024 passed in Notice of Motion No.3246 of 2023 by the Defendants is the subject matter of challenge in the present Writ Petition. By virtue of that order, Application filed by Defendants stand rejected. Application was to the effect that witness action of the Plaintiffs' witness No.1 which was recorded by the learned Trial Court partially should be discarded.
- 3.** At the outset, Mr. Jain has drawn my attention to page No.106 – Exhibit “E” on which an order dated 03.03.2023 is appended. According to this order, the evidence of Plaintiffs' witness No.1 stood discarded as he did not remain present for cross-examination. On that date, further directions were given to Plaintiffs' witness No.2 to file his evidence.

4. Mr. Jain would submit that by virtue of the impugned order, the learned Trial Court has completely disregarded its own order dated 03.03.2023 and has held the examination-in-chief of Plaintiffs' witness No.1 cannot be discarded. Defendants are aggrieved with the said examination-in-chief of Plaintiffs' witness No.1 still remaining on record despite the order dated 03.03.2023. It is seen that the Plaintiffs' witness No.1 whose evidence has been discarded by the Trial Court was instrumental in exhibiting the documents on behalf of Plaintiff. In view of the order dated 03.03.2023, request was made by Defendants to the Trial Court to cancel the exhibit numbers given to the documents which were marked in evidence by the Plaintiffs' witness No.1 and de exhibit them and thereafter permit the Plaintiffs' witness No.2 to re-exhibit the same. That request has also been rejected by the Trial Court.

5. Once the witness action of the witness of Plaintiffs i.e. PW-1 stands discarded in view of his non-availability for cross-examination, naturally Affidavit of evidence of the Plaintiffs' witness No.1 has to be discarded and it stands ousted from the record and file of the Court. In so far as re-exhibiting the documents is concerned, it is seen that the said documents were exhibited prior to the filing of the Affidavit of evidence by Plaintiffs and Defendants after undertaking the said exercise under the provisions of the Indian Evidence Act, 1872. None of the documents were exhibited during the examination-in-chief of

the Plaintiffs' witness No.1.

6. In that view of the matter, the learned Trial Court has correctly held that prayer for de-exhibiting the documents cannot be allowed since the said documents have already been exhibited by the Trial Court after hearing both the sides and therefore the said Application is devoid of merits. I agree with the reasons returned by the learned Trial Court in so far as exhibiting the documents is concerned. However to the extent of having the Affidavit of examination-in-chief of the Plaintiffs' witness No.1 removed from the record, it is clarified that in view of the order dated 03.03.2023, the said evidence Affidavit shall not be considered by the learned Trial Court and shall be removed from the record and file of the Court and returned back to the Plaintiffs alongwith the further examination-in-chief of PW-1 recorded on 22.09.2015.

7. With the above observations and findings, the following order is passed:-

- (i) While sustaining the impugned order dated 01.02.2024 partly the Writ Petition stands allowed and disposed;
- (ii) Since the Suit is of the year 2012, the learned Trial Court is requested by this Court to expedite the hearing of Suit proceedings as expeditiously as possible and in any event within a period of six (6) months from today;

- (iii) It is clarified that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment only if it is utmost necessary;
- (iv) Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings; and
- (v) All contentions of the parties are expressly kept open before the learned Trial Court.

8. Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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