

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13652 OF 2024

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Ashok Prabhakar Kamat

...Petitioner

V/s.

Swami Madhavnath Bodh Prasarak  
Mandal, A Public Trust and Ors.

...Respondents

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|---------------------------------------------|---------------------------|
| Mr.S.C.Wakankar a/w Ms.Aishwarya<br>Bapat:- | Advocates for Petitioner. |
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CORAM : S. M. MODAK, J.

DATE : 11<sup>th</sup> NOVEMBER 2024

P. C. :-

1. Heard learned Advocate Shri.Wakankar for the Petitioner/ Plaintiff No.2. Their Suit is for challenging the Will dated 5<sup>th</sup> December 2010 executed by the testator. The Respondents who are the Defendants in that Suit are the beneficiaries of the Will. One of the Plaintiffs has given evidence and also closed their evidence. After that, the Defendants started with their evidence by filing an Affidavit. Yet, the Plaintiff has not started with the cross-examination.

2. In the meantime, the Plaintiffs thought it desirable to examine a witness by name Pranav Satish Badve. It is on the point of not

executing the Will by the testator. According to the Petitioners, he was residing with the testator. Even, he has filed an Affidavit in support of the Plaintiffs. It is at the time of hearing of Exhibit-5 Application.

3. On this background, the Plaintiffs moved the trial Court for reopening of their evidence as per the Application dated 16<sup>th</sup> March 2024. It is for the purpose of examining the witness Badve. The trial Court rejected it as per the order dated 14<sup>th</sup> August 2024. It is challenged. My attention is invited to the observations in Para No.9 of the said order. It was rejected on the ground of negligence of the Plaintiffs in prosecuting the Suit and filing the Application.

4. It is true that the parties should get an opportunity to prove the case before the trial Court. The Plaintiffs have pleaded in Para No.4 of the Application about their attempts to contact the witness. An arguable case is made out. Hence, issue notice to Respondent Nos.1 to 3 returnable on 2<sup>nd</sup> December 2024.

5. Till the next date, further proceeding of the Suit is stayed.

6. Private notice, in addition, is allowed. Affidavit of service be filed.

[S. M. MODAK, J.]