

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16762 OF 2024

Mr. Laxmikant Vishnu Harihar and Anr.

... **Petitioners**

Versus

M/s Ashok & Company and Ors.

... **Respondents**

Mr. Pranav Shah & Inayat Ali Q. i/b Mr. Vidyesh Dhamdere for
Petitioner

Mr. Ashish Gatgat for Respondent Nos. 1, 2 and 3.

CORAM : SANDEEP V. MARNE, J.

DATE : 17th December, 2024.

P.C. :

1) Mr. Shah, the learned counsel appearing for the Petitioner would tender an apology on behalf of the Petitioners for non-compliance with the order dated 19 November 2024 by not depositing the amount of Rs. 3,00,000/- in this Court within a period of two weeks. He would submit that the Petitioners are now ready to deposit the amount of Rs. 3,00,000/- and would submit that the representative of the Petitioners has brought before the Court cheque of Rs. 3,00,000/-.

2) It appears that, after closure of Plaintiffs' evidence on 27 February 2024, Petitioners-Defendants failed to lead their evidence and by the order dated 29 July 2024, their evidence was closed and the suit was fixed for

final arguments. At the instance of the Defendants, the order of closure of their evidence was recalled by the Small Causes Court on 5 September 2024 and finally Defendants filed their evidence on 14th September, 2023. However, after filing of affidavit of evidence of Shri. Laxmikant Harihar, Defendants failed to get the witness in the box for recording his examination-in-chief and cross-examination on 14 different dates. Despite imposition of costs by the Small Causes Court, the Defendants continued with their inalcitrant attitude and failed to present the witness for examination-in-chief and cross-examination. In my view, therefore, the Small Causes Court was justified in rejecting the application at Exhibit 83. However, in order to provide one more opportunity to the Defendants to lead their evidence by imposition of exemplary costs on them for delaying the suit, the order dated 13 August 2024 is being set aside.

3) Accordingly, Petitioners-Defendants shall pay to the Plaintiffs costs of Rs. 3,00,000/-. The amount of cost shall be deposited in the Small Causes Court on or before 20 December 2024 with liberty to the Plaintiffs to withdraw the same. Subject to deposit of cost of Rs. 3,00,000/- in the Small Causes Court, the order dated 14 August 2024 is set aside.

4) Petitioners-defendants are granted opportunity to examine Shri. Laxmikant Harihar as witness. The deposition of the witness shall be completed within a period of two months.

5) The Petitioners-Defendants shall co-operate with the Small Causes Court for expeditious disposal of the suit without seeking even a single adjournment for the final argument. In the event any adjournment is sought on behalf of the Petitioner-Defendant before the Small Causes Court, the same shall be dealt with by imposition of exemplary costs.

6) With the above directions the Writ Petition is allowed with costs of Rs. 3,00,000/- as directed above.

[SANDEEP V. MARNE, J.]