

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

Writ Petition No. 16841 of 2024

Shri Ali Asgar Dekhani ... Petitioner
V/s.
Rosalina Menezes and others ... Respondents.

Mr. Sanjiv Sawant a/w. Abhishek Matkar and Malhar Bageshwar	Advocate for the Petitioner
Mr. Abhishek R. Avachat i/b. Mr. S.H.Deshpande	Advocate for Respondents.

CORAM : S.M. MODAK, J

DATE : 19 November 2024.

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P.C. :

Heard learned Advocate for the Petitioner-Plaintiff. The trial Court has refused permission to the Plaintiff to examine four witnesses as per the order dated 18 October 2024. Primarily, two reasons are quoted. They are:-

- (i) Plaintiff has not complied with the provisions of Order 16 Rule 1 of CPC by giving the list of witnesses after framing of issues.
- (ii) Suit is expedited by this court.

2. It is true that Petitioner has approached this Court earlier on two occasions:-

- (i) When the evidence was closed on 10 April 2024. At

that time Writ Petition (st) No.17678 was filed and it was allowed.

- (ii) When the trial court refused permission to plaintiff to file additional affidavit at that time Writ Petition(st) No.24072/24 was filed. It was allowed.

3. There are four defendants. The Defendant Nos.1 and 2 are the persons who have agreed to sale the property to the plaintiff as per the agreement dated 23 September 2013 whereas Defendant Nos.3 and 4 are the persons who have purchased the property from Defendant Nos.1 and 2 vide Sale Deed dated 13 February 2014. All the Defendants are represented by one Advocate before the trial Court. The plaintiff is cross-examined when original affidavit was filed. The Respondents have filed a Caveat and today they have appeared on the basis of private notice. They have cross-examined the plaintiff.

4. Learned Advocate Mr. Avachat is not having instructions whether they have cross-examined the plaintiff on the basis of additional affidavit. If they have not cross-examined, they have got every right to cross-examine the plaintiff on the basis of additional affidavit. They can do so by informing the Court and completing the cross-examination within reasonable time.

5. The plaintiff expressed a desire to examine three witnesses as per the application dated 5 October 2024. They are:

- (i) Ms. Komal Arun Jadhav, the witness to the agreement in question
- (ii) Mr. Nivrutti M.Panasare who is a Notary. According to Mr. Avachat, he is no more. Petitioner may verify this fact.
- (iii) Ms. Ashwini Pawar, Forensic Expert.
- (iv) Siddhali Shah, Chartered Accountant.

6. As stated above that request is rejected.

7. On the basis of instructions, learned Advocate Avachat for the respondents is not principally opposing for allowing the petition. His request is let it be completed within a time limit.

8. I have read the impugned order. The order no way reflects that after filing additional affidavit either plaintiff has closed his evidence or it was closed by the trial court by passing order. It is true that order 16 Rule 1 mandates the filing of list of witnesses but this provision cannot be interpreted in such a way so as to deprive a party from proving his case. The provisions of law are to be interpreted as observed by this Court in the case of *Dinesh Singh Bhim Singh vs. Vinod Shobhraj Gajaria & anr.*¹(Para No.30).

9. No doubt it is true that trial Court is bound to adhere to the time limit fixed by this Court. It is true that hearing of the suit was expedited by this Court on 16 September 2019. That period of two

¹ AIR(BomR) 401

years is over. It got extended and there is a consensus that extended period is over. It can be expected that necessary steps either be taken by the parties by extension or trial Court can do the same. **Merely because time limit has to be adhered, it does not mean that party can be deprived of his right to prove the case.** The learned Judge has committed an error in dis-allowing the application. It has to be allowed. Hence, the following order is passed:-

ORDER

- (i) The Writ Petition is allowed.
- (ii) The order dated 18 October 2024 passed by Special Civil Suit No.100/2015 is set aside.
- (iii) The Petitioner is at liberty to examine the witnesses as mentioned in the application dated 5 October 2024.
- (iv) The statement made by learned Advocate Mr. Sawant that affidavits of the three witnesses will be filed within three weeks is accepted. The Petitioner to secure their presence.
- (v) The Respondent to co-operate in conducting the cross-examination. Their evidence to be completed within 2 months from today
- (vi) In case the time limit is not followed, the trial Court is at liberty to pass appropriate order after considering which party has delayed the hearing.

(S.M. MODAK, J.)