

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 12571 OF 2024

IN

WRIT PETITION (ST) NO. 23256 OF 2024

Rajan Gopinath Khot & Anr.

.. Applicants

IN THE MATTER BETWEEN

Ulhas Kamalakar Gavande

.. Petitioner

Versus

Rajan Gopinath Khot & Ors.

.. Respondents

.....

- Mr. Kishor Patil a/w Mr. Pratik B. Rahade i/by Mr. Rajeev Matkar for Applicants
- Mr. J.K. Shah a/w Mr. Abhijit Kadam, Ms. Namrata Thakur & Mr. Govind Munde i/by R.J. Law for Petitioner

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 9, 2024

P. C.:

1. Heard Mr. Patil, learned Advocate for Applicants and Mr. Shah, learned Advocate for Petitioner.

2. At the outset Mr. Patil in his usual fairness would draw my attention to the last line of paragraph No. 9 of the Interim Application and would submit that said last line beginning with the words "*It was not informed...*" be deleted. Hence he seeks leave of the Court to delete that sentence. Leave granted. Amendment is permitted to be carried out forthwith. Re-verification stands dispensed with.

Amendment is carried out before me in the Application. Said sentence stands deleted and endorsed by this Court.

3. Present Interim Application seeks recall of the order dated 27.08.2024. Mr. Patil has brought one specific fact to my notice, *inter alia*, stating that the fact that Notice of Motion seeking condonation of delay for setting aside no written statement order was filed by Petitioner before the Trial Court is in fact disowned by the Advocate who appeared for the Petitioner therein. He would submit that an incorrect impression has been given to this Court that delay was the root cause for rejection of the said Notice of Motion.

4. In so far the first submission of Mr. Patil is concerned, he has candidly drawn my attention to the affidavit in support of the said Notice of Motion to argue his point. I have considered the same. What is of importance to be looked at by this Court is the balance of convenience and equity which this Court is called upon to decipher and decide from the point of irreparable loss and prejudice that can be caused to either of the parties

5. Petitioners before me represented by Mr. Kadam made his submissions and in fact for once I have in detail recorded all his submissions in the order dated 27.08.2024. Apart from the fact that there is a clear acceptance by Petitioner about the delay which has

occurred and a specific statement is also recorded by me that there will not be any dereliction whatsoever on the part of Defendant No. 4 in future to cross-examine PW-1 and that he shall abide by all terms and conditions as deemed fit and directed by the Trial Court, I directed Defendant No. 4 to cross-examine PW-1 on any given date and time that would be fixed by the Court and that he would not seek extension of time or any adjournment and in fact complete cross-examination on the appointed date if possible. Undoubtedly once certain observations are made to balance convenience of the parties on equity and having come to the aforeaid conclusion that Defendant No 4 deserves to be given an opportunity in the facts of the present case for which delay has been accepted by him, I also imposed costs of Rs. 25,000/- on him. Though Mr. Patil would not argue on the issue of quantum of costs, he would submit that conduct of Defendant No. 4 is the root cause for protraction of the trial and it hampers and prejudices the interest of the Plaintiff. Considering the order and directions contained in paragraph Nos. 9 to 11 therein, the apprehension expressed by Mr. Patil is in fact taken care of. I have categorically directed the learned Trial Court to use its discretion and hear the matter on day to day basis if so required so that cross-examination of Plaintiff is completed. Once such direction is given that there should not be any grievance on the part of the Plaintiff

regarding protraction. Not allowing Defendant No. 4 would virtually oust the Defendant from defending the suit proceedings and that may not be fair in the opinion of this Court. Hence the submissions made in the interim application cannot be considered in the interest of justice. Interim Application is therefore rejected.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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