



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4908 OF 2023

- 1 M/S Indian Medical Stores,
Through its Proprietor Alankar
Chandrakant Trivedi,
Aged 43 years, Occ. Business
- 2 Smt. Shobha Chandrakant Trivedi,
Aged 66 years, Occ. Household,
- 3 Anurag Chandrakant Trivedi,
Aged 56 years, Occ. Business,
- 4 Smt. Anupama Jitendra Mishra,
Aged 45 years, Occ. Household,
All 1 to 4 R/o Tukdoji Square,
Manewada Road, Nagpur-24
- 5 Manoj Chajjuram Sharma,
Aged 42 years, Occ. Service,
R/o Plot No. 120, New Subedar Layout,
Nagpur

PETITIONERS

VERSUS

- 1 Prakash Bharatlal Choudhary,
Aged 60 years, Occ. Business
- 2 Krishnakumar Bharatlal Choudhary,
Aged 58 years, occ. Business
Both 1 & 2 R/o 142, Reshimbagh,
Gajanan Chowk, Nagpur
- 3 Rupa Ramesh Shahu,
Aged 65 years, Occ. Household,
R.o Nandanwan Colony, Nagpur

RESPONDENTS

Mr. Y.B. Sharma, Advocate for petitioners

Mr. H.N. Bhondege, Advocate for Respondent Nos.1 and 2

CORAM : BHARAT P. DESHPANDE, J.

DATE : 28th MARCH, 2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with consent.

2. The present petition is filed challenging the orders passed by the learned trial Court closing evidence of the defendants, refusing to open such evidence on an application filed on the same day and also rejecting the review application.

3. The learned counsel for the petitioners would submit that the matter was fixed for evidence on 09/03/2021. The petitioner / defendant was unable to attend the Court due to body pain, fever and, therefore, his counsel advised him not to attend the Court and to go for the RTPCR test since it was the Covid pandemic period.

4. The learned trial Court passed an order below Exh.1, thereby closing the evidence of the defendant on the ground that the petitioner along with his Advocate remained absent when called at 12:45 P.M. The learned counsel for the petitioners would submit that immediately the application was moved

before the learned trial Court on 09/3/2021 itself vide Exh.175 for reopening the evidence and granting time, which was rejected.

5. The learned counsel for the petitioners would then submit that on the same day another application was filed vide Exh.176 dated 09/03/2021 for setting aside the order of closer of evidence. Such application was also rejected.

6. The petitioners, thereafter moved an application for review of such order, however, by order dated 20/06/2023, such review application is also rejected.

7. The learned counsel for the petitioners submits that due to Covid pandemic, the defendant was unable to attend the Court. However, this ground has not been considered by the learned trial Court.

8. The learned counsel for the respondents / plaintiffs while objecting to such submissions claimed that evidence of the plaintiff was closed in January, 2020 itself, however, the defendant in order to delay the proceedings failed to step into the witness box and applications were filed disclosing difficulty of the Advocate.

9. The record produced before this Court would clearly goes to show that the matter was fixed for defence evidence and since the defendant and his counsel remained absent, when the matter was called at 12:45 P.M., order was passed below Exh.1, closing evidence. It is admitted fact from the record that on the same day after passing the order on Exh.1, an application was moved vide Exh.175 for grant of adjournment, whereby disclosing the reason that the defendant was suffering from body pain and fever and accordingly he was advised to undergo RTPCR test and only after the report is received as negative, to attend the Court.

10. The learned trial Court without considering such grounds and the fact that circulars were issued by the Government to that effect, passed cryptic order stating that the evidence of the defendant is already closed and accordingly the application is rejected. Admittedly, the application was moved on the same day and thus the Court was within its powers to consider such application for the reasons mentioned therein. By not exercising jurisdiction available with the Court a valuable right of defendants to lead evidence is taken away.

11. The matter does not end here, since the petitioners moved an application for setting aside the order of closer of evidence on 09/03/2021 itself which is at Exh.176. It is the fact that the learned counsel for the petitioners was in the other Court, however, he remained present before the learned trial Court after the order was passed on Exh.1 and immediately moved the application. The learned trial Court passed order on Exh.176 on the ground that earlier adjournments were granted and that since last one year the defendant is not leading evidence. The fact remains that the learned trial Court granted such opportunities and failed to consider that the reasons discloses in the application for adjournment.

12. The petitioners then filed an application for review of the said order vide application at Exh.182. Such application was again rejected vide order dated 20/6/2023. Though the learned trial Court in para 6 observed that the ground of illness of defendant is not considered while passing the order below Exh.176, held that such order was passed on merit.

13. It is necessary to note here that during Covid pandemic period which started somewhere in March, 2020,

various directions were issued by the Central Government as well as by the High Court. The seriousness of such pandemic ought to have been considered by the learned trial Court. There is no denial of the grounds mentioned in the adjournment application filed at Exh. 175. At the most the adjournment could have been granted by imposing some costs. Closing evidence of the defendant on such ground seems to be harsh step. At the most, short adjournment could have been granted for the purpose of leading evidence by putting conditions. The reasons in the impugned orders are seems to be too technical in nature and amounts to denial of justice as well as opportunity to the defendant to lead evidence.

13. The impugned orders are, therefore, quashed and set aside. The defendant / petitioner is permitted to lead evidence. The petition is allowed in the above terms. No costs.

Rule is made absolute in above terms.

(BHARAT P. DESHPANDE, J.)

MP Deshpande