



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8654 OF 2024

Bharatibai Bhaurao Patil And Another
VERSUS
Baburao Gundappa Dongaonkar Died And Others

- Mr. R. R. Deshmukh, Advocate for the Petitioners
- Mr. P. R. Nangare, Advocate for the Respondent Nos. 1 and 2

CORAM : R. M. JOSHI, J
DATE : MARCH 20, 2025

PER COURT :

1. This Petition takes exception to the impugned order dated 02.07.2024 passed below Exh. 172 in RCS No. 169/2007 whereby the application filed by Defendant Nos. 1 and 2 for setting aside evidence close order came to be rejected.

2. Learned Counsel for the Petitioners submit that without getting into the merits of the order, if permission is granted to him examine three witness i.e., Gramsevak Nidesan, Uttam Ramchandra Alande and Bharatibai Vishwambhar Chikhale, Petitioners/Original Defendants would close their evidence. It is his submission that the Trial Court has already issued bailable warrant against Gramsevak and in so far as

other two witnesses are concerned, on the next date of hearing he will file affidavit of evidence of these two witnesses with giving advance copies thereof to Respondents/Plaintiffs.

3. Learned Counsel for Respondents vehemently opposed the Petition.

4. It is always in the interest of parties that the proceedings are decided on merits rather they are scuttled on technicalities. Herein this case, though Defendant nos. 1 and 2 were given opportunity of leading evidence, they did not avail it. However, since the statement is made that these three witnesses would be examined on one day, no prejudice will cause to other side if the order impugned is set aside.

5. This Court is informed that the next date of hearing before Trial Court is 15.04.2025. The statement made, on instructions, with regard to examination of these three witnesses on the next date of hearing is accepted as an undertaking. It is open for the learned Trial Court to close evidence of the Petitioners/Defendants if the evidence of these three

witnesses is not over on the said day, except for the reason that Plaintiffs seeks time to cross-examine witnesses. Learned Counsel for Petitioners has further made statement that no Court assistance would be required for procuring presence of Uttam Ramchandra Alande and Bharatibai Vishwambhar Chikhale.

6. In view of above, Petition is allowed. Hence, the order:

O R D E R

- (i) Impugned order is set aside.
- (ii) Trial Court to permit the Petitioners /Defendant Nos. 1 and 2 to examine the above mentioned witnesses on 15.04.2025.
- (iii) Petitioners to provide copy of affidavit of evidence to the Plaintiffs Counsel before Trial Court at least on 07.04.2025.
- (iv) It is clarified that even if the presence of Gramsevek cannot be secured on that day, it is open for the Trial Court to close evidence of Petitioners.
- (v) Trial Court to dispose of the suit as expeditiously as possible and in any case, within a period of three months from today.

(R. M. JOSHI, J.)