



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12107 OF 2024

**PANDHARINATH PANDURANG SALUNKE AND OTHERS
VERSUS
NANDINI RAMDAS ANDHALE AND OTHERS**

.....

Advocate for the Petitioner : Mr. Narayan S. Pawar
Advocate for the Respondent No.1 : Mr.Y.S. Choudhari

...

CORAM : SHAILESH P BRAHME, J.

DATE : 25th FEBRUARY 2025

PER COURT :

1. Heard learned counsel Mr.Pawar for the petitioners and Mr. Choudhary for respondent no.1 finally at the admission stage. Though respondent nos.4 and 6 were served with notice for final disposal, none appeared on their behalf.
2. Petitioners are assailing order dated 20.07.2024 below Exhibit-77 and order dated 31.08.2024 below Exhibit-79 passed by learned Joint Civil Judge Senior Division,Ahmednagar in Spcl.Civil Suit No.15 of 2016. Petitioners are original defendant nos.1,3 and 5. Respondent no.1 is the original-plaintiff who has filed suit for partition, declaration and injunction.
3. The evidence of the respondent no.1 was over and evidence closure pursis was filed on 04.11.2023. Since then the matter was

posted from time to time for adducing evidence of petitioners/defendants. Despite opportunities, no steps were taken by them for adducing the evidence. Ultimately vide order dated 17.02.2024 their evidence was foreclosed and matter was posted for final arguments. Petitioners submitted application Exhibit-77 on 16.04.2024 for quashing order dated 17.02.2024 and permitting them to adduce evidence. It was resisted by the plaintiff. It came to be rejected by the first impugned order dated 20.07.2024.

4. The petitioners, thereafter presented application Exhibit-79 on 09.08.2024 seeking quashment of earlier orders and permission to lead evidence. The respondents opposed the said application. It was rejected vide order dated 31.08.2024 which is the second impugned order. The petitioners submitted applications Exhibit-81 and Exhibit-84 seeking stay of the suit and the adjournments which were rejected. Those are consequential applications and the orders.

5. Learned counsel for the petitioners submits that his clients are ready to lead evidence. The respondent no.1 has filed a false suit. Petitioners have already filed their written statements. They want to contest the suit sincerely and honestly. If the impugned orders are quashed, they would commence to lead oral evidence and conclude the same within a short-span. It is further submitted that petitioners are likely to examine two to three witnesses only. Learned counsel would therefore pray to allow this petition and grant the petitioners one opportunity to lead evidence.

6. Mr.Chaudhari, learned counsel appearing for respondent no.1 supports impugned orders. He would submit that by reasoned orders the applications of the petitioners were rejected. Petitioners failed to adduce evidence. The trial court is justified in rejecting their applications considering lapses on part of petitioners. He would submit that suit is old one and the intention of the petitioners is to protract the same. He would submit that there is no merit in the petition and it is liable to be dismissed.

7. Having heard both sides, what emerges is that parties are litigating for their substantial claims in Spcl.Civil Suit No.15 of 2016. Petitioners have filed written statements and considering the pleadings, there is a serious contest. Already respondent no.1 has adduced oral evidence. When it was the turn of the petitioners to adduce evidence due to their lapses, their right were forfeited by the trial court.

8. Already the right to lead evidence of the petitioners was forfeited by order dated 17.02.2024 below Exhibit-01. While rejecting application Exhibit-77, learned trial Judge recorded the conduct of the petitioners and their failure to lead evidence. In the second impugned order also same observations are reiterated. It's a matter of record that petitioners were not diligent in leading the evidence. They were given opportunities to commence the evidence, but no steps were taken.

9. Today learned counsel Mr. Pawar for the petitioners has made a candid statement that petitioners are really interested in leading oral evidence. They propose to examine two to three witnesses. Under facts and circumstances, I deem it appropriate to extend one opportunity to the petitioners to lead evidence. Learned counsel for the petitioners has assured that petitioners are ready to file affidavit in lieu of examination-in-chief of their first witness within period of one week. It would be in the interest of justice to permit the petitioners to lead evidence and simultaneously to expedite the suit. I trust the statements made by learned counsel for the petitioners.

10. However, to balance the equities, I propose to impose cost. Already the suit is old and the matter was adjourned for adducing the evidence of the petitioners. In view of principles of natural justice, I find that impugned orders are liable to be quashed. I therefore pass following order :

ORDER

a) Writ Petition is partly allowed .

b) Order dated 17.02.2024 below Exhibit- 01, Order dated 20.07.2024 below Exhibit-77 and order dated 31.08.2024 below Exhibit-79 in Spcl. Civil Suit No.15 of 2016 passed by learned Joint Civil Judge Senior Division,Ahmednagar are quashed and set-aside.

c) Petitioners applications below Exhibit-77 and Exhibit-79 stand allowed subject to payment of cost of Rs.15,000/- (Rupees Fifteen Thousand only) to respondent no.1 within two weeks which shall be condition precedent.

d) The petitioners shall file affidavit of examination-in-chief within period of two (02) weeks from today. They shall ensure that their witnesses shall punctually remain present for the cross-examination.

e) Both parties shall co-operate for expeditious disposal of the suit. The trial court shall decide the suit within period of six (06) months.

[SHAILESH P. BRAHME, J.]