

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4691 OF 2024

M/s. Sanghvi Construction Company ...Petitioner
vs.
Bhagwandas Ramdas and Others ...Respondents

Mr. Farhan Dubash a/w. Mr. Kalpesh Mehta, Mr. Vasim Shaikh i/b.
Mr. Pravin Mehta & Mithi Co., for the Petitioner.

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CORAM : N. J. JAMADAR, J.
DATE : FEBRUARY 11, 2025

P.C:

1. Heard the learned counsel for the petitioner.
2. The petitioner/ plaintiff calls in question the legality, propriety and correctness of an order dated 22nd March, 2021 passed by the learned Judge, City Civil Court, Greater Bombay in Notice of Motion No. 100814 of 2021 in Suit No. 7577 of 1981 whereby the Notice of Motion taken out by the plaintiff for reopening the evidence in the suit and to recall PW.1 for the purpose of tendering draft agreement enclosed with the letter dated 28th October, 1980 and for marking the same in evidence, together with the said letter dated 28th October, 1980, came to be rejected.
3. The learned Judge was not inclined to permit the plaintiff to reopen the evidence and recall PW. 1 as the suit was instituted in the year 1981, the evidence of the plaintiff was recorded during the

long period of six years and there was no justifiable reason to recall and reopen the evidence and recall PW. 1 at such a belated stage. It was also noted that there was gross negligence on the part of the plaintiff.

4. Mr. Dubash, learned counsel for the petitioner, made an endeavour to persuade the Court to hold that it was a case of mere inadvertence and not negligence, as held by the learned Judge, City Civil Court.

5. I am not inclined to entertain the petition at this stage for the reason which probably fortifies the view of the learned Judge, City Civil Court. The impugned order was passed on 22nd March, 2021. The petition seems to have been lodged on 7th April, 2021. For almost four years, no effort seems to have been made to get the petition listed for admission. The record indicates that office objections were removed on 17th January, 2025, only. Mr. Dubash, fairly submitted that, in the intervening period, the final arguments have been advanced, before the City Civil Court, and only arguments on behalf of defendant No. 3A remained to be advanced.

6. Evidently, when the final hearing of the suit is about to be concluded and judgment delivered, the petitioner has moved the petition. This delay in moving the petition despite filing the petition under a month of the impugned order, is inexplicable. The avowed

purpose of moving the petition now, seems to derail the final disposal of a 44 year old suit, which is on the verge of conclusion. Therefore, this Court does not find any reason to entertain the petition at this stage.

7. In any event, the order impugned in the instant petition is of such nature that it can be legitimately assailed in an appeal, under section 105 of the Code of Civil Procedure, 1908, in the event decree is passed against the plaintiff.

8. The petition thus stands rejected.

(N. J. JAMADAR, J.)