

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12150 OF 2024

Anil Krupashankar Dube	...Petitioner
<i>Versus</i>	
M/s. Gammon India Limited & Anr.	...Respondents

Mr. Pratik S. Sabrad i/b. Mr. Yuwraj Patil, for the Petitioner.
Mr. Harshal Damania, for the Respondent No.1.

CORAM: MADHAV J. JAMDAR, J.
DATED : 25th FEBRUARY 2025

P. C.:

1. Heard Mr. Sabrad, learned Counsel appearing for the Petitioner and Mr. Damania, learned Counsel appearing for the Respondent No.1.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the legality and validity of the order dated 5th July 2024 passed below Exhibit-1 in R.A.E. Suit No.1981 of 2010 and the order dated 7th August 2024 passed below Exhibit-66 in R.A.E. Suit No.1981 of 2010 by the learned Judge, Small Causes Court at Mumbai. By the impugned order dated 5th July 2024, evidence of the Defendant No.2 is closed

and matter was posted for final arguments. Application dated 7th August 2024 filed for setting aside the said order dated 5th July 2024 is also rejected by the impugned order dated 7th August 2024.

3. Perusal of the record shows that the Defendant No.2 failed to file his Evidence Affidavit and therefore, his evidence was closed. Thereafter, the Defendant No.2 filed Exhibit-63 Application for setting aside said order. The said Application was allowed on 11th March 2024 and the Defendant No.2 was directed to file his affidavit of chief examination on next date. The Defendant No.2 failed to file affidavit of chief examination on further dates i.e. 8th April 2024 and 8th May 2024. Accordingly, on 5th July 2024 learned Judge has again passed the order of closing the evidence of Defendant No.2. Thereafter, immediately Application bearing Exhibit-66 has been filed on 7th August 2024 for setting aside the said order dated 5th July 2024. In the said Application, it is stated that the Applicant is filing the evidence affidavit along with the said Application. In the Application, *inter alia* the reason given is ill-health of the Petitioner. The said Application came to be rejected by the impugned order dated 7th August 2024. In the impugned order it has been observed that no medical certificate is annexed

and that the Defendant No.2 has failed to comply with the Court's order. There is substance in what the learned Judge has observed in the impugned order. However, as a result of the impugned orders, the evidence of the Defendant No.2 is closed.

4. Mr. Sabrad, learned Counsel appearing for the Petitioner states that undertaking will be filed before the learned Trial Court by the Petitioner within a period of two weeks stating that the Petitioner will not seek adjournment unless there are compelling reasons and that he will completely cooperate with the learned Trial Court for proceeding with the matter expeditiously.

5. Accordingly, although the learned Judge is completely justified in passing the impugned orders, in the interest of justice, to ensure that said R.A.E. Suit No.1981 of 2010 is decided on merits, the impugned orders dated 5th July 2024 and 7th August 2024 are quashed and set aside on the condition that, the Petitioner deposits an amount of Rs.50,000/- as cost in the account of the Respondent No.1 on or before 1st March 2025. Mr. Damania, learned Counsel appearing for the Respondent No.1 to immediately give details of bank account of the Respondent No.1

to Mr. Sabrad, learned Counsel appearing for the Petitioner during the course of the day.

6. For the above reasons, the Evidence Affidavit of D.W.1 which has been filed along with Exhibit-66 Application is accepted and to be read as evidence in the trial of said R.A.E. Suit No.1981 of 2010. The learned Judge, Small Causes Court at Mumbai is requested to keep the matter for cross-examination of D.W.1-Anil K. Dube on an appropriate date.

7. It is clarified that this order is passed on the undertaking given by the Petitioner through learned Counsel that the Petitioner will henceforth completely cooperate with the learned Trial Court in proceeding with R.A.E. Suit No.1981 of 2010 in an expeditious manner and no adjournment will be sought unless there are compelling circumstances.

8. Pursuant to the order dated 30th August 2024 passed by a learned Single Judge in this Writ Petition, the Petitioner has already deposited an amount of Rs.25,000/- in this Court. After the Petitioner deposits the said amount of Rs.50,000/- in the account

of the Respondent No.1 on or before 1st March 2025, the Petitioner is at liberty to withdraw the said amount of Rs.25,000/- from this Court.

9. Accordingly, the Writ Petition is disposed in above terms.

[MADHAV J. JAMDAR, J.]

SONALI
MILIND
PATIL

Digitally
signed by
SONALI
MILIND
PATIL
Date:
2025.02.26
14:37:36
+0530