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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6244 OF 2025**

M/s. Basant Reality Private Ltd through ... Petitioner
Sarabjeet H Sindhu

vs.

M/s. Elegant Constructions through V.V. ... Respondent
Raikar

Mr. Chaula Solanki a/w. Mr. H.H. Nagi, Ms. Niranjana Pradhan,
Ms. Rinky Kanojia Jadhav, Lekha Srigala, Mr. Dev Shah, Mr. Iram
Indiwale i/b. Nagi and Associates for Petitioner.

Mr. Keshav Borhade for Respondent.

CORAM : GAURI GODSE, J.

DATED : 27th JUNE 2025

ORDER:

1. Learned advocate for the respondent waives notice for final disposal of the petition. Considering the nature of the impugned order, the petition is taken up for final disposal.

2. The Petitioner is the original defendant who challenges the order dated 1st April 2025 passed by the City Civil Court imposing a cost of Rs. 1,00,000/- as a condition for recalling orders dated 26th March 2025 and 27th March 2025. By the said orders, the petitioner's right to lead evidence and cross-examine the plaintiff's witness is foreclosed. A few facts would be necessary to examine

the submissions on behalf of the petitioner. The suit was initially a summary suit filed in this court. When the suit was pending in this court, the petitioner was granted conditional leave to defend, pursuant to which the amount of Rs. 2 Crores was deposited by the petitioner, which is lying in the custody of the court. The suit was transferred to the City Civil Court on 15th April 2024. When the suit was at the stage of “marking documents of the plaintiff”, on 27th January 2025, the suit was listed before the court when the following order was passed, which is “noted in the roznama” as follows:

“ This is High Court transferred Suit bearing No. 38/2010 having age of 15 yrs old. Adv. Keshav Borhade for plaintiff is present. Defendant is absent. Adv. Rinki Kanojia i/b. Nagi and Associates for def. is present. Witness PW-1 Mr. Vikrant Vikas Raikar is present. Exh. 7-Un-registered original Agreement dt. 16.03.2006. The matter is adjourned as the witness is not prepared. Matter is adj. for recording evidence(marking of documents) to 26.03.2025.”

3. On 26th March 2025, the following order was passed:

“This is High Court transferred Suit bearing No. 38/2010 having age of 25 yrs old. Parties are absent. Adv. Keshav Borhade present for plaintiff. None present for defendant.

Witness PW-1 is present. Following documents are exhibited. Exh.8-Original Receipt for Rs. 2,00,00,000/- Exh. 9- Original Letter dated 27th February 2008 Exh.10-colly- Returned Registered A.D. Packets containing original letter dated 21st August 2009. Exh.11 colly- Returned packet by courier containing copy of letter dated 21st August 2009. Exh.12 colly- Copy of letter dated 22nd October 2009 addressed by the Plaintiffs advocate to the Defendants with acknowledgment by courier and Registered AD post a/w receipt of Vichare Courier as well as postal receipt. Exh. 13 colly- Office copies of the Letter dated 21st August 2009 and office copy of the Letter dated 31st August 2009 a/w. postal receipt and Courier receipt for letter dt. 31.08.2009 Exh.14 – Evidence closure pursis filed by Id. Adv of plaintiff. O-Read and Record. Matter is adj. for evidence of defendant to 27.03.2025.”

4. Immediately on the next date, i.e on 27th March 2025, the following order was passed :

“Parties are absent. Adv. Keshav Borhade present for plaintiff. Adv. Niranjana Pradhan h/f. Nagi and Associates present for defendant as per stage, evidence of defendant is not tendered hence, closed the side of defendant and adjourned for final argument. As per office order No. 142 of

2025, dt. 24.03.2025 HHJ is relieved from duties w.e.f 27.03.2025(A.N.) to attend special programme on NDPS Act, Prevention of Corruption Act and other subjects to be held on on 28th and 29th March, 2025 at Maharashtra Judicial Academy, Uttan, Thane. Hence, matter is adjourned. Matter is adj. For argument to 01.04.2025.”

5. On the next date, i.e. 1st April 2025, the application was moved on behalf of the defendants to recall the earlier order dated 27th March 2025 regarding closure of the defendant's evidence. A supporting affidavit is also filed explaining that the advocate for the defendant was required to appear in another case on 26th March 2025. Hence, was unable to attend on the day when it was called on 26th March 2025. The particulars regarding other cases that were pending on the same day were mentioned in the supporting affidavit. Though there is no specific order of no cross, by way of abundant precaution, the defendant also prayed for recalling the witness no.1 of the plaintiff by setting aside the order of no cross passed on 26th March 2025 and permitting the defendant to cross-examine the plaintiff's witness. This application was registered as Notice of Motion No. 1983 of 2025. By the impugned order, this application is decided by the concerned Judge of the City Civil Court.

6. Learned Judge has allowed the application, subject to

payment of Rs. 1,00,000/- to be paid to the plaintiff within four weeks. Aggrieved by this condition of payment of cost, the defendant has filed this petition. Learned counsel for the petitioner submits that there was no deliberate attempt on the part of the defendant to remain absent. She submits that only because the defendant's advocate was held up in another court, on the same day, at the same time the suit was called out on 26th March 2025, the advocate could not attend. She submits that on 26th March 2025, since the next date was assigned as 27th March 2025, on 27th March 2025, a request was made along with a written application to recall the order dated 26th March 2025; however, the same was not considered as it was not in proper format, and the suit was posted for final argument on 1st April 2025.

7. The learned counsel for the defendant relies upon the contents of the affidavit in support of the notice of motion filed and moved before the court on 1st April 2025. She submits that for no fault on the part of the defendant, the impugned order imposes a cost of Rs. 1,00,000/- as a condition for recalling the orders of 26th March 2025 and 27th March 2025. She submits that the reasons given in the impugned order are not justifiable, as there is no delay caused by any of the acts of the defendant. She therefore submits that the conditions imposed in clauses (2) to (6) in the operative part of the order dated 1st April 2025 be set aside.

8. Learned counsel for the respondent-original plaintiff opposes the prayer on the ground that the suit has been pending since 2010. He submits that if this court is inclined to allow the petitioner's prayer, necessary directions be issued for deciding the suit within the time-bound frame.

9. I have perused the papers of the petition and considered the submissions made on behalf of both parties. It is peculiar to note that on 27th January 2025, when the suit was posted for 'marking documents of the plaintiff', the matter was adjourned on that day as the plaintiff's witness was not prepared. The entry in the roznama dated 27th January 2025, further records that the suit was adjourned for recording evidence, marking documents to 26th March 2025. The entry in roznama dated 26th March 2025 indicates that none was present for the defendant, and the plaintiff's witness and advocate were present. The evidence close pursis of the plaintiff was taken on record, and the suit was adjourned for evidence of the defendant on 27th March 2025. The entry of roznama of 26th March 2025 does not record any order of "no cross by defendant". On 27th March 2025, the learned advocate for the defendant was present, but did not tender any evidence. It appears that the evidence was not tendered as the suit was still pending for cross-examination of the plaintiff's witness. Since the defendant's evidence was not tendered, the

learned Judge recorded that the defendant's evidence was closed and thus adjourned the suit for final argument. The defendant is therefore aggrieved by the orders dated 26th March 2025 and 27th March 2025.

10. A perusal of both the entries indicates that without posting the suit for recording cross-examination of the plaintiff's witness or any order of no cross of the plaintiff's witness, the order was passed foreclosing the defendant's evidence. Learned advocate for the defendant has taken immediate steps on 27th March 2025 as well as on 1st April 2025, requesting to recall the earlier order and permit the defendant to cross-examine the plaintiff's witness and also lead evidence on behalf of the defendant.

11. A perusal of the affidavit in support of notice of motion filed on behalf of the defendant contains material particulars regarding justification for not appearing on 26th March 2025. Although the suit has remained pending since 2010, the delay cannot be attributed solely to the defendant in the absence of any particulars recorded in the order imposing costs. No prejudice would have been caused to any parties if the orders dated 26th March 2025 and 27th March 2025 were recalled, and the defendant was allowed to cross-examine the plaintiff's witness and permit the defendant to lead evidence. However, with a hyper-technical approach, the evidence of the defendant was foreclosed by the

learned Judge on 27th March 2025.

12. The reasons in the impugned order are based on the prayers made in the notice of motion by observing that no prayer was made to set aside the no-cross order. Strangely, the entry in the roznama dated 26th March 2025 does not contain any such order of no cross. Further observations in the impugned order concern the application tendered on behalf of the defendant on 27th March 2025, which was stated to be in the improper format. In my view, the observations in the impugned order amount to a hyper-technical approach in deciding the request made on behalf of the defendant to permit the defendant to cross-examine the plaintiff's witness. In the absence of any ground attributed to the conduct of the defendant, I see no reason in imposing the cost of Rs. 1,00,000/- while allowing the defendant's application.

13. Hence, in view of the aforesaid peculiar facts and circumstances of the case, this is a fit case where the discretionary jurisdiction under Article 227 of the Constitution of India is required to be invoked to interfere with the impugned order.

14. Learned counsel for the plaintiff may be right in submitting that the suit has been pending since 2010 and hence, the suit needs to be disposed of expeditiously. However, the fact cannot

be ignored that it is the defendant's amount that is lying deposited in the court as a condition for leave to defend. Hence, I see no reason for the defendant to be interested in delaying the hearing of the suit. However, it is expected that the parties will cooperate to expedite the disposal of the suit and refrain from seeking unnecessary adjournments.

15. For the reasons recorded above, the petition is allowed by passing the following order;

I) The conditions imposed in clauses (2) to (6) of the operative order dated 1st April 2025, passed by the City Civil Court in Notice of Motion No. 1983 of 2025, are quashed and set aside.

II) Clause (4) of the operative part of the impugned order dated 1st April 2025 is modified, and the condition to pay the cost is set aside. Clause (3) of the impugned order dated 1st April 2025 is quashed and set aside. The order dated 26th March 2025 and 27th March 2025 foreclosing the defendant's right to cross-examine the plaintiff's witness and the defendant's right to lead evidence is quashed and set aside.

III) Defendant is permitted to cross-examine the plaintiff's witness and is also permitted to lead evidence.

IV) Parties agree that they shall not seek unnecessary adjournments and shall cooperate for the earlier disposal of the suit.

16. Writ Petition is allowed in the aforesaid terms.

(GAURI GODSE, J.)