



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.2682/2024
Anshul and others V Sau. Kanchan

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.S. Shingane, Adv for petitioner.
Mr. Abhay Sambre, Advocate for respondent.

CORAM : R.M. Joshi, J.
DATE : 20-06-2025.

This petition takes exception to the orders passed below Exhibit-33 dated 04-08-2023 and order below Exhibit-35 dated 13-02-2024. There is no dispute about the fact that the respondent is plaintiff in Special Civil Suit No.34/2021. Plaintiff had sought interim injunction against the sole defendant i.e petitioner no.1 herein restraining him from causing interference in the possession of the plaintiff over the suit property.

2. Since the defendant/plaintiff no.1 and other petitioners entered in the suit property on 19-10-2021, according to the plaintiff there was breach of the injunction and hence proceedings under Order 39 Rule 2(a) came to be initiated being RMJC No.259/2021. Notice was issued to the non-applicant therein, returnable on 12-04-2022. Non-applicant caused appearance in the proceedings through Advocate. In spite of

causing of the said appearance, no say was filed to the application and hence the application proceeded without say of the non-applicant. Thereafter, evidence was led by the respondent herein on 12-12-2022. Since none appeared for the non-applicant therein, order came to be passed for no cross examination of plaintiff. When the said proceeding was kept for judgment on 24-04-2023, the non-applicant moved an application before the court on 24-04-2023 to take up the matter on board and moved application for permission to file say. Say was filed on same day (exhibit-33). This application came to be rejected by the Court on 04-08-2023. After rejection of the said application another application was moved on the same day seeking permission to cross examine the plaintiff. Since both applications are rejected present petition came to be filed.

3. Learned Counsel for the petitioners submits that except for petitioner no.1 the other petitioners were not party defendant to the original suit and hence in any case there say was necessary to the application. It is his submission that no prejudice would cause to the other side if the permission is granted to the petitioner to file say and to oppose application on merits. Insofar

as the rejection of application exhibit-45 is concerned it is his submission that even without filing of reply, it would be open for the petitioner to cross examine the plaintiff and witnesses. Thus, it is his argument that interest of justice requires interference in both the orders.

4. Learned Counsel for the respondent/original plaintiff opposed the petition on the ground that conduct of the petitioners disentitles them from seeking any relief from this Court. He drew attention of the Court the fact that though appearance was caused on 12-04-2022 before the Court below, the petitioners have not bothered to appear before the court to file reply or to cross examine the witness. It is his submission that the malafide intention of the petitioners can be gathered from the fact that when the matter was fixed on 24-04-2023, four days before petitioner took proceeding on board before trial Court and application came to be filed seeking leave to file reply. This according to him indicates that the petitioners were fully aware of the proceedings and waited calculatively till the matter is kept for judgment. It is his submission that whole intention of the

petitioner is apparent that they were interested in delaying the matter on one or the other pretext.

5. There is no dispute about the fact that the petitioners were served with the notice of the proceedings and caused their appearance on 12-04-2022. In order enable the petitioners to seek order of setting aside no say order, it was obligatory on the part of the petitioner to show satisfactory reasons for not appearing before the Court and not filing of reply. Perusal of the application does not indicate any reason much less satisfactory reason. The facts as appeared from the record indicate that there is substance in the contention of learned Counsel for the respondent that it was a calculated act on the part of the petitioner not to appear before the trial Court. In such circumstances, for want of any satisfactory explanation for not filing reply, the order passed by the Court below of rejecting the application exhibit-33 cannot be interfered with.

6. It is pertinent to note that the application was moved by the petitioner for filing reply and when same was rejected, the petitioner has attempted to make an application for cross examination of the witnesses. Needless to say that subject to the

legal restrictions it is open for the party to cross examine the other side even without filing any written statement. Thus it cannot be said that application Exhibit 35 was filed belatedly and hence it does not be allowed. However taking into consideration the overall conduct of the petitioner, for the purpose of setting aside the said order passed below Exhibit-35 appropriate needs to be imposed. In the facts and circumstances amount of cost is determined at Rs. 5000/-. Costs be paid with the next date of hearing before the trial Court. Petition stands partly allowed. Impugned order passed below Exhibit-33 is confirmed. Order below Exhibit-35 stands set aside. Apparition Exhibit-35 is allowed, subject to above condition.

7. Payment of costs being pre-condition, the trial Court to ensure that the costs is already paid to the plaintiff before cross examination

(R.M. Joshi, J.)