



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

WRIT PETITION NO.3009/2025

Ashok Laxman Gulhane .Vs. Ajay Maroti Langote

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

Court's or Judge's orders

Mr. S. P. Kulkarni, Advocate for petitioner.

CORAM : ANIL L. PANSARE, J.

DATE : JUNE 16, 2025

Heard.

2. Challenge is to the concurrent findings rendered by the Courts below. The suit filed by petitioner against respondent for malicious prosecution, came to be dismissed vide order dated 21.02.2022 passed by learned Civil Judge Senior Division, Yavatmal. The said order has been upheld by First Appellate Court vide order dated 25.10.2024.

3. Having heard counsel for the petitioner and having gone through the record and impugned order, it appears that the issues in the suit were framed in July, 2025. The petitioner – plaintiff on 28.03.2016, filed affidavit in lieu of chief-examination. The petitioner then failed to pursue the suit and, therefore, in September, 2016 and January, 2018, the suit was listed under the caption “For Dismissal”. The petitioner, however, filed application Exh.-28 seeking permission to lead evidence stating therein that though he filed affidavit in lieu of chief-examination, certain important documents are to be filed. According to the petitioner, important documents could not be filed because on previous date(s) his son’s marriage was to be performed. Accordingly, he requested to remove the suit from the caption of ‘dismissal’ and sought permission to lead evidence.

4. Thus, what appears from Exh.-28 is that the petitioner intended to file certain documents. As such, if at all the petitioner intended to file certain documents he should have annexed those documents along with application. He, however, didn't file these documents for years together. The Courts below, therefore, have rightly observed that filing application is nothing but an empty formality.

5. Be that as it may, when the suit was listed on 21.02.2022, the Court noted certain facts, of which some are recorded hereinabove. The other facts were that defendant No.2 expired on 07.04.2021. A pursis to that effect was filed on 16.08.2021. The petitioner did not take necessary steps to bring on record, legal representatives of defendant No.2 who is father of defendant No.1 (present respondent). Accordingly, the suit came to be abated against defendant No.2. The Trial Court then noted that the suit as against defendant No.1 proceeded ex parte.

6. Thus, what was left was petitioner's further evidence and what has he done on 21.02.2022 is that he tendered pursis Exh.-39 which was placed on record, not by petitioner's advocate but by another advocate namely, Advocate Rajesh Jain, stating therein that the contents of Exh.28, should be treated as petitioner's argument. The Court below then noted that petitioner was present along with Adv. Rajesh Jain, however, they showed inability to lead further evidence. Accordingly, the Trial Court observed that the application Exh.28 is taken out as an empty formality and that the petitioner was not really bona fide in leading evidence. The Court below accordingly took note of Order XVII Rules 2 and 3 of the Civil Procedure Code, 1908, to dismiss the suit.

7. I find this approach to be in tune with the provisions of the Code. Rules 2 and 3 of Order XVII of the Code, provide that when

any party to the suit to whom time has been granted fails to produce his evidence, or to perform any other act necessary to further progress of the suit for which time has been allowed, the Court may proceed to decide the suit or to dismiss the suit, if parties are absent.

8. In the present case, it appears that the Trial Court has proceeded to decide the suit since the petitioner was present. Result, however, was dismissal because the Court was left with no other alternative but to dismiss the suit. This is so because in absence of evidence and since the defendant did not admit the claim in terms of Rule 8 of Order IX, the suit has been dismissed.

9. Thus, what transpires is that the suit was filed in the year 2013, the issues were framed in July, 2015 affidavit in lieu of chief-examination was filed in March, 2016, thereafter, there was absolutely no progress and the suit was listed under the caption of 'dismissal' when for no reason, the petitioner filed application Exh.28, seeking permission to file on record certain documents, which he failed to file from March, 2018, till the impugned order came to be passed in February, 2022. On that day also, a pursis Exh.-39 was filed stating therein that the contents of Exh.28 be treated as petitioner's argument. If the contents of Exh.28 were to be treated as petitioner's argument, what the petitioner said is that he intends to place on record certain important documents which he failed to file on previous dates because of marriage of his son. It is worth nothing here that application Exh.28 was filed in March, 2018 whereas affidavit of chief-examination was filed in March, 2016. Thus for two years, petitioner appears to be busy in marriage of his son and thus ignored Court proceeding. He further failed to prosecute the application Exh.28 for four years and then showed his inability to lead evidence. It is not known as to what prevented the petitioner in filing the so called important documents on the date when the impugned order was passed.

10. The Court taking note of the aforesaid conduct and finding that the suit is pretty old and further finding that the suit proceeded ex parte against defendant No.1 and stood abated against defendant No.2 and since the petitioner failed to take necessary steps, was compelled to pass the impugned order, which has been rightly upheld by the First Appellate Court. No interference is thus called for in supervisory jurisdiction under Article 227 of the Constitution of India. The writ petition is, accordingly, dismissed.

(Anil L. Pansare, J.)

Kahale