
(2017) 11 BOM CK 0121
In the Bombay High Court
Case No : 568 of 2017

Mrs. Vasundhara Prabhakar Naik (expired) APPELLANT
Vs
Smt. Lourdin D"Silva, & Ors. RESPONDENT

Date of Decision : 15-11-2017

Acts Referred:

Citation : (2017) 11 BOM CK 0121

Hon'ble Judges : C.V. Bhadang

Bench : SINGLE BENCH

Advocate : Rama Gajanan Rivankar, Joaquim Godinho

Final Decision : Allowed

Judgement

1. On 13.09.2017, a notice for final disposal was issued in this petition. Accordingly, I have heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondent nos. 1 to 4, who are the contesting respondents and the petition is being disposed of finally.

2. The challenge in this petition is to the order dated 02.06.2017, passed by the learned Trial Court refusing to reopen the evidence of the petitioner/plaintiff. The petitioner had filed an application for re-opening of the evidence on 27.04.2017, on the ground that PW-1 was suffering from prostate enlargement with recurrent UTI with residual urine and persistent low backache and was under medication and was advised rest. A medical certificate was produced in support.

3. The learned Trial Court by the impugned order found that the suit was of the year 2011 and was pending for more than five years and there was a direction from the Appellate Court to dispose of the suit expeditiously. The learned Trial Court has also observed that the petitioner had sought two adjournments before filing the affidavit in evidence on 23.08.2016. The learned Trial Court also noted that the evidence of PW-1 was partly recorded on 17.09.2016 and since then, PW-1 had failed to remain present. It appears that in the interregnum, an application for amendment and for production of documents were filed. In short,

the Trial Court found that the suit was adjourned for more than five occasions and therefore, the evidence of the petitioner was closed.

4. On hearing the learned Counsel for the parties and having regard to the fact that PW-1 was prevented on account of his medical condition in attending the Court, which is supported by medical certificate, an opportunity can be granted to the petitioner, subject to the condition of payment of costs.

5. The learned Counsel for the petitioner undertakes that PW-1 shall remain present before the Trial Court on 27.11.2017 at 2:30 p.m.

6. Hence, the following order is passed: O R D E R

(a) The petition is allowed.

(b) The impugned order is set aside.

(c) The petitioner shall be permitted to further examine PW-1 and to lead any other evidence.

(d) This shall be subject to payment of costs of Rs.10,000/- to the contesting respondent nos. 1 to 4. The costs to be paid on or before the next date.

(e) Rule is made absolute in the aforesaid terms.