

(2010) 10 BOM CK 0229
In the Bombay High Court
Case No : Writ Petition No. 558 of 2010

Shri Bhikaji Babusso Naik Satardekar	APPELLANT
Vs	
Shri Anil Laximan Ghadi	RESPONDENT

Date of Decision : 11-10-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 10 BOM CK 0229

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : A. Kansar, for the Appellant;

Judgement

A.P. Lavande, J.—Heard Mr. A. Kansar, learned Counsel for the petitioner. Respondent is absent though served.

2. Rule. Heard forthwith.

3. By this petition under Article 227 of the Constitution of India, the petitioner challenges the order dated 12.4.2010 and also dated 23.6.2010 by which application dated 26.4.2010 filed by the petitioner in Special Civil Suit No. 13/2003/A, pending before Civil Judge Senior Division, Bicholim has been dismissed.

4. The petitioner is the defendant in the above suit filed by the plaintiff seeking relief of injunction. In the above suit the plaintiff was examined on 12.4.2010. Advocate for the defendant did not remain present as he was not in a position to appear before the Court when the matter was called out. The learned Trial Judge closed the cross on behalf of the defendants and called upon the plaintiff to furnish copy of the affidavit of next witness in advance. Thereafter on 26.4.2010, the defendant filed an application seeking permission to recall the witness to cross examine. By impugned Order learned Trial Court has dismissed the application primarily on two grounds. Firstly on the ground that such an application was not maintainable since the defendant did not ask for recall of the

order passed by the Trial Court closing the cross examination of the plaintiff and secondly on the ground that on merit no case was made out by the defendants for cross examination of the plaintiff.

5. Mr. Kansar, learned Counsel appearing for the petitioner/plaintiff submitted that serious prejudice would be caused to the petitioner in the event the defendant is not permitted to cross examine the plaintiff. He further submitted that the petitioner be permitted to cross examine the plaintiff by imposing appropriate costs.

6. The respondent though served has chosen not to appear.

7. Perusal of the record discloses that on 12.4.2010 Advocate Mr. M.P. Sawaikar, appearing for the defendant could not remain present when the matter was taken up for cross examination of the plaintiff and as such an order closing the cross of the plaintiff was passed.

8. I am in agreement with the learned Counsel for the petitioner that serious prejudice would be caused to the defendant in the event defendant is not permitted to cross examine the plaintiff. Therefore in the interest of justice and subject to imposition of the costs the defendant deserves to be given an opportunity to cross examine the plaintiff.

9. For the reasons aforesaid, the impugned Order dated 12.4.2010 closing the cross examination of the plaintiff and impugned order dated 23.4.2010 passed by Civil Judge, Senior Division, Bicholim in Special Civil Suit No. 13/2003/A is quashed and set aside subject to the petitioner paying costs of Rs. 5000/- to the plaintiff. The costs shall be deposited within three weeks from today in the trial Court. In case costs are not deposited within three weeks the impugned orders would stand revived. If costs are deposited in the trial Court, liberty to the respondent to withdraw.

10. The petitioner is directed to co-operate with the trial Court in early disposal of the suit and not to seek unnecessary adjournment in the matter. Interim relief Order dated 18.8.2010 stands vacated. Parties shall appear before the Trial Court on 10.11.2010 at 10 a.m.

11. Rule is made absolute in the aforesaid terms.