

(2012) 04 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6500 of 2007 and Civil Miscellaneous Stay Application No. 494 of 2007

Smt Dhapli and Others

APPELLANT

Vs

Additional District and Sessions Judge and Others

RESPONDENT

Date of Decision : 16-04-2012

Acts Referred:

Citation : (2012) 04 RAJ CK 0085

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Advocate : H.P. Singh, for the Appellant; Madan Lal Soni, for the Respondent

Judgement

Mahesh Bhagwati

1. Challenge in this writ petition is to the order dated 13.7.2007, whereby the learned Additional Sessions Judge, Neem Ka Thana, closed the evidence of the plaintiffs-petitioners. Learned counsel for the petitioners plaintiff canvassed that the learned trial court sans assigning any cogent reason closed their evidence, hence the order of the learned trial court being arbitrary deserves to be set-aside. Learned counsel, however, prayed that in the interest of justice, one and the last opportunity may be granted to the plaintiff-petitioners to produce their evidence.

2. Having heard the learned counsel for the parties and carefully perused the relevant material on record, it is noticed that the learned trial court closed the evidence of the plaintiff-petitioners on the ground that issues were framed on 21.3.2006 and dates 18.4.2006, 1.5.2006, 17.7.2006 and 4.8.2006 were fixed for recording the evidence. The affidavits of the witnesses Keshar, Hoshiyar and Bodu were produced on 4.8.2006. On 13.7.2007, neither the witnesses appeared before the court nor any reason was assigned for their non appearance. The approach of the learned trial court seems to be genuine. However, looking to the facts and circumstances of the case and in the interest of justice, I deem just

and proper to grant one and the last opportunity to the petitioners-plaintiff to produce their entire evidence on the next date of hearing subject to the payment of cost of Rs. 2000/-, which shall be paid to the respondents-defendants.

3. Consequently, the writ petition is allowed and the order dated 13.7.2007 is set aside.

4. The learned trial court is directed to allow the petitioners-plaintiffs to produce their entire evidence subject to the payment of cost of Rs. 2000/- to the respondents-defendant. It is made clear that the evidence of the plaintiff-petitioners shall be recorded by the learned trial court only after the amount of cost of Rs. 2,000/- is paid by the petitioners-plaintiff.

5. The parties are directed to appear before the trial court on 30th April, 2012. The learned counsel for the petitioners is directed to keep his witnesses, whose affidavits have been filed, present before the trial court on that day for their cross-examination and the learned counsel for the respondents-defendants is directed to cross-examine all the witnesses on that very day and in case the cross-examination is not completed on that day, the case should be adjourned to very next day for their cross examination and under no circumstance, third date should be granted for the purpose of cross-examination of witnesses of the plaintiff-petitioners.

6. With the aforesaid directions, the writ petition stands disposed of, accordingly. Consequent upon the disposal of writ petition, the stay application, filed along-with the writ petition, does not survive and that also stands disposed of.