CORAM : PRITHVIRAJ K.CHAVAN,J.

RESERVED ON : 08/04/2022
PRONOUNCED ON : 11/04/2022

JUDGMENT :-

1. Rule, returnable forthwith.

2. Taken up for final disposal at the stage of admission with consent of the respective counsel.

3. Facts are as follows, -

a) Petitioners are original plaintiffs. A Special Civil Suit has been filed seeking relief of declaration and cancellation of development agreement as well as perpetual injunction and damages qua the suit property, which is described in the plaint.

b) In short, the petitioners have come up with a case that unilateral revocation of the irrevocable power of attorney, despite the same being legally enforceable and binding upon defendant No.1, has caused great prejudice to the petitioners and, therefore, the respondents-defendants need to be injuncted.

c) After commencement of the evidence on 31st December, 2018, the petitioners moved an application seeking adjournment on the ground that petitioner No.1 is out of station for the marriage and, therefore, unable to attend the court. It was opposed by the respondents by bringing to the notice of the court that the petitioners had sought several adjournments in the suit and was granted a last chance. The trial court observed that the suit was pending for more than ten years, which was to be dealt with expeditiously in view of the directions of this Court by giving preference to the old suits. The cross-examination of the petitioners could not be completed owing to their repeated absence, and, ultimately, evidence of the petitioners was closed on 14th March, 2016. Opportunity was given to the petitioners to face the cross-examination. However, there was no further progress except granting an application moved by the petitioners in the interregnum under Order I Rule 10 of CPC.

d) The learned Trial Court by an order dated 31.12.2018 held that the affidavit in view of examination-in-chief filed by the petitioners

cannot be considered in evidence as he did not face cross-examination. It has been also observed that non-furnishing the list of witnesses by the petitioners would also be a ground for not permitting further evidence to be adduced on his behalf. The Trial Court closed the evidence of the petitioners/plaintiffs and posted the matter for dismissal on the next date.

e) Thereafter, by the second impugned order dated 25.2.2019, by giving a chequered history as regards the delaying tactics and conduct of the petitioners, the learned Trial Court rejected the second application. It has, *inter alia,* been observed that despite granting permission twice after closure of the evidence, the petitioners did not take any steps in setting aside the said orders. Even after setting aside the orders, the petitioners did not diligently proceeded with hearing of the suit and, therefore, according to the Trial Court, there is bleak possibility of the plaintiffs proceeding with the suit. The trial Court has also observed that the plaintiffs have abused the process of law and their conduct is not bonafide.

4. I heard learned Counsel for the petitioners and respondents.

5. At the outset, the counsel for the petitioners fairly concedes as regards the conduct of the petitioners before the Trial Court. However, he submits that subject to costs, the impugned order be set aside and the petitioners be allowed to proceed further in the suit expeditiously by making it time bound. The learned Counsel for the respondents is also gracious enough to accept the request on behalf of the petitioners.

6. While exercising discretionary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India, this Court, indeed, has no limits, fetters or restrictions to exercise its powers of superintendence for ensuring to advance ends of justice and uproot injustice.

7. The learned Counsel for the petitioners, has, therefore, placed useful reliance upon a judgment of the Supreme Court in case of ***Rameshchandra Sankla and Ors. Vs. Vikram Cement***

and Ors. - (2008) 14 SCC 58. Relevant para of the said judgment is extracted as under, -

> " It is well settled that jurisdiction of the High Courts under Articles 226 and 227 is discretionary and equitable. The power of superintendence under Article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised ex debito justitiae i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a *court of law* but also as a *court of equity*. It is, therefore, within the *power* and also the *duty* of the Court to ensure that power of superintendence must "advance the ends of justice and uproot injustice".
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> Powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the court must take into account the balancing of interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. Courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience." (emphasis supplied)

8. This Court in case of ***Mr.Sainath Amonkar and Ors. Vs. Mr.Ravindra K.Amonkar and Ors. - 2014***

SCC OnLine Bom. 1072, has had an occasion to deal with a similar issue which is precisely on the aspect of the powers of the Court to grant adjournment. The law on that aspect is also no more *res integra.* There is no doubt that the proviso to Order XVII Rule 1 of CPC contemplates that only if sufficient cause is shown at any stage of the suit, the Court may grant time to the parties and adjourn hearing. The proviso states that no such adjournment shall be granted more than three times to a party during hearing of the suit. It has been held that said provision being a rule of procedure has to be held to be not mandatory but directory. The said provision has to be applied with some flexibility and not with regidity or inflexibility. Rules of procedure are indeed handmaids of justice and are mean to advance ends of justice and not to thwart or obstruct the same. This has been observed by High Court of Punjab & Haryana in case of ***Gurvinder Singh Vs. Government of India (CDJ) [2011 PHC 115].*** The learned Single Judge has categorically held that closure of evidence sought by granting only three opportunities has proved to be very harsh resulting into dismissal of the

suit. It has resulted in miscarriage of justice and has caused grave injustice to the plaintiff. It has been further observed that ends of justice would be met if the plaintiff is granted two more opportunities for his evidence at own responsibility on payment of heavy costs.

9. In the case at hand, suit was filed way back in 2008. Astonishingly, the petitioners themselves are responsible for protracting the trial of the suit for more than twelve years under one pretext or the other. Petitioners are promoters and developers. They are financially well off. However, their continued recalcitrant attitude is apparent which even the counsel representing them admits in unequivocal terms. It is needless to go through each and every detail in respect of which the record speaks for itself. The respondents had, indeed undergone hardships and sufferings due to such attitude of the petitioners without any fault of them. In order to alleviate sufferings and hardships of the respondents and having considered the entire circumstances, exemplary costs need to be imposed upon the

petitioners while accepting their prayer.

10. Taking into consideration the powers under Article 227 of the Constitution to be exercised by this Court, vis-a-vis the ratio laid down in case of ***Mr.Sainath Amonkar and Ors. Vs. Mr.Ravindra K.Amonkar and Ors.***(supra) and the fact that the learned Counsel for the respondents has fairly conceded to allow the matter to be adjudicated upon merits and the learned Counsel for the petitioners has not pressed prayer clause (D) in so far as it relates to impugned order dated 31.12.2018 passed below Exh. 132, following order is expedient, -

ORDER

i. The impugned order dated 25.2.2019 passed by learned Civil Judge, Senior Division, Aurangabad, is quashed and set aside subject to costs of Rs.1,00,000/- (Rupees one lac), to be deposited in the Trial Court on or before 22.4.2022.

ii. The parties are directed to appear before the Trial Court on 25th April, 2022 at 11.00 AM.

iii. Upon appearance of the parties, the Trial Court shall permit the parties to proceed for examination and cross-examination of the witnesses, if any, in accordance with law.

iv. The parties shall not seek adjournment on any ground till evidence of the respective parties are closed, except for any emergent/urgent reason.

v. After closure of the evidence of the parties, the Trial Court shall decide and dispose of the suit in accordance with law by the end of July 2022.

vi. The Trial Court shall inform the compliance of the aforesaid directions to this Court by the end of August 2022.

vii. Rule is made absolute in the aforesaid terms.

(PRITHVIRAJ K.CHAVAN)
JUDGE

BDV