

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 15TH DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.725 OF 2021 (GM-CPC)

BETWEEN

SRI H D DEVEGOWDA
S/O LATE DODDEGOWDA,
AGED ABOUT 88 YEARS,
'AMOGHA', PADMANABHANAGAR,
BANGALORE 560070. ... PETITIONER

(BY SRI PRAKASH G R, ADVOCATE)

AND

M/S NANDI INFRASTRUCTURE CORRIDOR
ENTERPRISE LIMITED,
NO 1, MIDFORD HOUSE,
MIDFORD GARDEN, OFF M.G. ROAD,
BANGALORE 560001,
REP BY ITS AUTHORISED SIGNATORY. ... RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS IN CS N/O.4545/2012 PENDING ON THE FILE OF THE ID.VIII ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH 15), BENGALURU; DIRECTION AS THE CASE MAY BE SETTING ASIDE /THE ORDER DATE 17/11/2020 PASSED ON IA NOS.VII AND IX BY THE ID.VII ADDL.CITY CIVIL AND SESSIONS JUDGE (CCH 15), BENGALURU AND BY ALLOWING THE SAID IA NOS. VIII AND IX, PERMIT THE PETITIONER/DEFENDANT TO ADDUCE HIS ORAL AND DOCUMENTARY EVIDENCE AND ETC.

THIS WRIT PETITION COMING ON FOR **ORDERS** THIS DAY THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner happens to be the sole defendant in a civil suit in O.S.No.4545/2012; this suit is for a decree of damages; it is founded on the alleged tort of defamation; evidence of respondent-plaintiff having been accomplished, a number of times, opportunity was given to the petitioner to lead his evidence; however, he did not avail the same; matter was posted for arguments; petitioner by the subject applications filed serially & belatedly requested for reopening the suit stage so that he can lead his evidence; the learned trial Judge vide order dated 17.11.2020 (Annexure-A) has declined this request; that is how petitioner is now knocking at the doors of Writ Court.

2. Having heard the counsel for the petitioner and having perused the petition papers, this Court declines to grant indulgence in the matter for the following reasons:

a) The suit was filed by the respondent on 27.06.2012; it is founded on alleged defamation; plaintiff claims the damages in a sum of Rupees Ten Crore; Written Statement has been filed on 13.08.2012 resisting the suit; issues have been framed years ago; plaintiff's evidence was completed on

06.02.2019; matter was posted to 26.02.2019 for the defence evidence; however, petitioner & his counsel remained absent and therefore, his evidence being taken as nil, case was posted for arguments.

b) When the suit was posted for arguments, about a year thereafter the subject applications are moved once again, for reopening the suit stage; no affidavit of the petitioner is filed in support thereof nor any reason is assigned for not filing one; only petitioner's advocate on record has filed a Memorandum of Facts in support of the said applications, even when what was sought to be stated was within the personal knowledge of the petitioner; the said Memorandum of Facts dated 28.06.2020 supporting the application in IA No.IX at para 3 reads as under:

“The defendant, as already submitted, is an aged politician and his health condition is also not providing adequate time to go through the evidence already prepared, which contains voluminous records. Al the records to rebut the allegation of the plaintiff has to be furnished before this Hon’ble Court, to establish the case of the defendant. The truth is to be proved before this Hon’ble Court, which calls for production of deeds, act, and things of the plaintiff. The plaintiff’s intention to suppress the constitutionally guaranteed freedom of expression needs to be established before this Hon’ble Court.”

The explanation offered by the advocate on record as above on behalf of the petitioner for not availing the umpteen opportunities earlier granted for leading defence evidence is hardly plausible, to say the least.

c) The learned trial judge though not in a happy language structures the impugned order with the following reason:

“This suit is filed by the plaintiffs seeking damages from the defendant, in which, matter was posted for defendant’s evidence, defendant remained absent. Hence, the defendant’s evidence has been taken as nil and now when the matter was posted for argument, defendant once again filed I.A.No.VIII & IX seeking to reopen the stage for adducing defendant’s evidence. In the Memorandum of Facts filed in support of I.A.No.VIII & IX due to peculiar circumstances, defendant could not adduce his evidence. On perusal of the records, it appears that on 06.02.2019 matter was posted for defendant’s evidence, but defendant and his counsel remained absent; defendant’s evidence was closed on 26.02.2019, thereafter on 03.06.2019, defendant had filed I.A.No.V & VI for re-opening of the stage; by allowing said applications once again order was given to defendant to produce evidence; but even if four adjournments were given, defendant failed to produce his evidence; again on 07.09.2018, his side was closed; thereafter, defendant had filed I.A.No.VII for re-opening the stage and said application was allowed on 31.10.2019 by imposing cost of Rs.2,000/-. Even after that once again, defendant filed produce his evidence and now after about almost one year once again defendant filed present application at I.A.No.VIII & IX, which goes to show that defendant is not so serious in conducting the proceedings and he is in

the habit of filing application like present one, only with an intention to drag the matter; hence it is necessary to reject the application filed by the defendant.”

The opinion of the learned judge that the petitioner has been dragging on the suit proceeding is formed on the basis of what has been reflected in the Order Sheet; there is no reason to doubt the same; in matters like this, a Writ court cannot run a race of opinions with learned judges of the Courts below.

d) The suits founded on the tort of defamation need to be tried as expeditiously as possible; reputation, be it personal or occupational, for any person is sacrosanct; the Apex Court has ruled that, the right to reputation is a facet of Article 21 of the Constitution of India; the public memory being too short to be little, the claim for redressal for the hurt of reputation merits speedier consideration and ideally speaking, before the public memory fades; in defamation suits, award of damages in terms of money hardly constitutes a full recompense for the injury suffered; delayed justice makes it still worse; this is an added reason for the speedy trial of such suits; they cannot be allowed to be dragged on indefinitely; this inarticulate premise having animated the

decision of the learned trial judge, impugned order is not vulnerable for challenge.

e) The impugned order cannot be faltered for yet another reason too; learned judge of the Court below having exercised his discretion in accordance with rules of reason & justice, has made the impugned order the kind of which does not merit a deeper examination at the hands of a Writ Court exercising a limited supervisory jurisdiction constitutionally vested in it by Article 227, vide **SADHANA LODH Vs. NATIONAL INSURANCE CO. LTD., & ANOTHER**, (2003) 3 SCC 524.

In the above circumstances, this writ petition being devoid of merits, is liable to be rejected in limine and accordingly, it is.

Learned trial judge is requested to dispose off the subject suit within an outer limit of nine months, all contentions of the parties having been otherwise kept open.

The Registry is directed to send a copy of this order to the learned judge forthwith.

**Sd/-
JUDGE**