

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2280 OF 2015

Prakash Namdeo Patil

...PETITIONER

versus

Bapu Namdeo Patil and others

...RESPONDENTS

.....
Mr. S.H. Jadhav, Advocate holding for
Mr. S.P. Brahme, Advocate for Petitioner
Mr. Amit Savale, Advocate for respondents No. 1 to 3.
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 28th AUGUST, 2015

Order :-

1. Petition has been moved by original defendant No. 2 in Regular Civil Suit No. 5 of 2008 against orders dated 14-08-2014 and 12-01-2015 on Exhibits-148 and 152 passed by Civil Judge, Junior Division, Dondaicha, respectively refusing requests of the petitioner.
2. It appears that defendant No. 2's request for transposition as plaintiff in suit under Exhibit-139 was allowed subject to payment of costs of Rs. 1000/- on or before 21-07-2014. However, since costs could not be paid on or before 21-07-2014, application Exhibit-148 came to be moved on 24-07-2014, and the same had been rejected on 14-08-2014.

3. Subsequently, another application Exhibit-152 appears to have been moved on 18-09-2014 for similar relief and for recalling of order dated 14-08-2014, pointing out that weak financial position of the petitioner had been the main reason for default occurred in making payment of costs before stipulated date. There appears no dispute on this aspect of the matter. Application Exhibit-152 dated 18-09-2014 has been rejected under order dated 12-01-2015 and as such, petitioner is before this court.

4. Though applications were purported opposed there appears to be no dispute on factual aspects pleaded by petitioner.

5. Under the circumstances, since main application Exhibit 139 for the purpose of transposition of petitioner as plaintiff had been allowed, this court while initially, had issued notice on 04-03-2015 directed the petitioner to deposit a sum of Rs.5000/- in the trial court giving sufficient indication that petitioner's *bona fides* were put at stake. It further appears that the petitioner has deposited the amount as directed. Taking into account overall view of the matter, it would be expedient that amount of Rs. 5000/- be appropriated towards costs referable to the one granted by the trial court earlier in July, 2014.

6. As such, orders dated 14-08-2014 on Exhibit-148 as well as 12-01-2015 on Exhibit-152 passed by Civil Judge, Junior Division Dondaicha in Regular Civil Suit No. 5 of 2008 are set aside. Amount of Rs.5000/- deposited by the petitioner in trial court under order dated 04-03-2015 of this court shall be appropriated towards costs pursuant

to order dated 02-07-2014 on Exhibit-139 in Regular Civil Suit No. 5 of 2008 passed by Civil Judge, Junior Division, Dondaicha. Applications Exhibits- 139, 148 and 152 stand allowed. The costs be paid to the respondents accordingly.

7. Writ petition stands allowed in terms of prayer clause "C" and disposed of accordingly. Suit to proceed accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK