

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8839 OF 2014

Leelabai Shivaji Dahiphale

PETITIONER

VERSUS

Somnath S/o Bappaji Khedkar

RESPONDENT

Mr.V.S.Badakh, Advocate for the petitioner.
Respondent served.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/10/2015

PER COURT :

1. I have heard the learned Advocate for the petitioner for quite some time. Despite service of court notice, none appears for the sole respondent. The petitioner has deposited an amount of Rs.2,500/- before the Trial Court in deference to the order dated 08/10/2014 passed by this Court.

2. Mr.Badakh, learned Advocate contends that the petitioner is a poor, illiterate and an agriculturist lady and is the defendant in RCS No.528/2012 filed by the respondent seeking relief of compensation of Rs.5,00,000/- on account of defamation.

3. She received Court Notice from the Trial Court on 25/07/2013.

Efforts were made to settle the matter between the litigating sides, who reside in the same village. A “no written statement order” was passed by the Trial Court on 28/12/2013. As the petitioner was out of station, she lost sight of the matter and was not aware that the written statement has to be filed within 90 days.

4. She moved an application Exh.13 for seeking permission to file a written statement, on 19/03/2014. By the impugned order dated 24/06/2014, the application was rejected thereby virtually rendering the petitioner defenceless. A cryptic order in 3 lines has been passed while rejecting Exh.13.

5. It is further submitted that no loss or harm of any nature whatsoever would be caused to the respondent, if the petitioner files her written statement. Moreover, the petitioner has deposited Rs.2,500/- before the Trial Court, which can be received as costs by the plaintiff.

6. Reliance is placed upon the judgment of this Court delivered in the case of Laxmi w/o Bisan Ujjanwar and another Vs.Smt.Sharda w/o Mohammed Yaqub [2008(2) Mh.L.J. 561]. The petitioner submits that this Court has considered the doctrine of “justice to the

downtrodden” while allowing the petition in the Laxmi case (supra).

7. I have considered the above submissions. None appears for the respondent despite service.

8. It is apparent that the impugned order has resulted in preventing the petitioner from filing her written statement. She is likely to have no say in the matter and which involves a claim by the respondent for an amount of Rs.5,00,000/- against the petitioner. I do not find that the delay caused can be termed as being deliberate or inordinate.

9. In the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], the Honourable Apex Court has laid down guidelines while dealing with the application for condonation of delay, which are ;

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a

pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

10. This Court in the Laxmi Case (supra) has concluded in paragraph Nos.5 to 11 as under :-

"5. The application for permission to file a Written Statement is not properly worded, and lacks the pleadings explaining reasons or cause of failure to file the Written Statement in due time. This lapse is, however, liable to be viewed as a fault attributable to mofussil and unskilful drafting.

6. It would be solely depending on the lawyer representing a party to explore and aver facts essential to making out a case, particularly when the litigants are rustic. Lack of proficiency by a lawyer engaged or who accepts the brief has, in fact, denied to such litigant due and fair legal aid.

7. This Court will have to give a peaceful consideration and thought as to whether the doctrine of 'Justice to Downtrodden' has some application even in the matters of disputes between two individual litigants, parties to civil disputes, and a party is deprived even of a basic and elementary legal aid and advice.

8. The case like one at hand where the plaintiff, who had contested the application for permission to file a Written Statement, has failed to appear before this Court spite of issue of a notice of final disposal for over a period of ten months, leads this Court to reach to no other conclusion that to strike the balance of justice, it would be in the interest of justice to allow the application and permit the defendants to file their Written Statement on certain conditions.

9. The procedural law can never be oblivious to hard realities of life and basic need of commitment of doing justice according to law. Principles of natural justice and the warrant of fair justice cannot be ignored.

10. Permission to file a Written Statement can, therefore, be granted, however, it shall be on payment of cost of Rs. 500-00 (rupees five hundred only) by the petitioners to the plaintiff, within one month from the date of appearance before the trial Court.

11. In the result, petitioners' application for a leave to file a Written Statement (Annexure-1) is allowed, on the condition that the petitioners pay or deposit in trial Court cost to the plaintiff in a sum of Rs. 500-00 (rupees five hundred only) within one month from the date of appearance. Parties shall appear before

the trial Court on 17th December, 2007.”

11. I do not find that any loss or harm would be caused to the respondent if the petitioner is permitted to file her written statement. In contra-distinction, the petitioner is likely to suffer an irreparable loss, manifest convenience and hardships if she is not permitted to file her written statement.

12. In the light of the above, this petition is allowed. The impugned order dated 29/03/2014 is quashed and set aside. Application Exh.13 is allowed subject to the cost of Rs.2,500/- which has already been deposited by the petitioner before the Trial Court in RCS No.528/2012. The said amount can be received and withdrawn with accrued interest, if any, by the respondent/plaintiff without conditions.

13. The petitioner shall, therefore, file her written statement before the Trial Court on or before the 17/10/2015, failing which she shall acquiesce her right to file her written statement.

(RAVINDRA V. GHUGE, J.)