

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1454 OF 2014

Trimurti Nagari Sahakari Patsanstha]
Mydt.] ... Petitioners

Versus

Smt. Laxmibai Parshuram Mule and Ors.] ... Respondents

Mr. Siddharth Gadve i/b Mr. Vijay Killedar for Petitioner.

CORAM :- M. S. SONAK, J.
DATE :- MARCH 17, 2015

P. C. :-

1. The learned Advocate for Petitioners files the necessary newspaper publication evidencing substituted service by way of publication. The same is taken on record.
2. Accordingly, the service is complete in the present Petition.
3. This Court, by Order dated 05/05/2014, had made it clear that this Writ Petition would be heard and disposed of finally at the stage of admission.

4. This Petition is directed against the Order dated 26/07/2013 by which the Civil Judge, Senior Division, Jaisingpur, has declined to recall the 'No WS' order.

5. Perusal of the impugned order would indicate that the learned Civil Judge has not even adverted to the cause shown by the Petitioners for the inability to file the Written Statement within a period of 90 days from the due date. The impugned order has been made on the sole ground that 90 days is the maximum time limit for filing of the Written Statement which time limit expired on 29/01/2013 and therefore there are no legal, sufficient and convincing grounds for allowing the Petitioner's application.

6. If the applications, seeking recall of the 'No WS' order were to be perused, then it would be clear that although the Petitioners have been, to a certain extent, negligent in prosecuting the matter, the negligence was not of such degree as would warrant deprivation of valuable opportunity to file the Written Statement. The Petitioner is a Co-Operative Credit Society. The application seeking recall states that the office of the Credit Society was relocated to a different place and in the process of such relocation, there was some delay in tracking the casepapers and documents. The application also states that the Written Statement was, in fact, ready on 28/01/2013 and even Affidavit in respect of the same was sworn on the same date. However, as the matter was adjourned to 17/06/2013, the Petitioners were under

the bonafide impression that the Written Statement would be filed on the said date.

7. The aforesaid explanation indeed indicates some amount of negligence on the part of the Petitioners. This is because on 16/01/2013, there was already a 'No WS' order made. Accordingly, nothing prevented the Petitioners from applying to the Civil Judge for recall of the 'No WS' order, soon after the same was made. Nevertheless, the explanation furnished does not smack of any malafide. It is possible that since the matter was adjourned to 17/06/2013, the Petitioners were under the bonafide impression that the application for recall has been made on the said date.

8. Therefore, taking into consideration the aforesaid circumstances cumulatively, the impugned order dated 26/07/2013 is set aside, subject to the Petitioner paying to the Respondents-Plaintiffs costs in an amount of Rs.10,000/- (Rupees Ten Thousand Only). Such costs shall be paid by the Petitioners to the Respondents-Plaintiffs within a period of four weeks from today.

9. Rule is made absolute to the aforesaid extent.

10. There shall be no separate order as to costs in the present Petition.

11. The Petitioner to appear before the Civil Judge, Senior Division, Jaisingpur, on 30/03/2015 at 11.00 a.m. and produce authenticated copy of this order. In case the costs as directed by this order are paid by the Petitioner within the period prescribed, the learned Civil Judge, Senior Division, Jaisingpur, to take on record the Written Statement of the Petitioner and thereafter to proceed with the matter in accordance with law.

(M. S. SONAK, J.)