

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 775 OF 2015

**Shalan Suresh Wagh
Age adult, Occupation business
Residing at RH 67/30, Indraprastha
Shahu Nagar, Chinchwad,
Pune 19**

.. Petitioner

Versus

**1. Thane Janata Sahakari Bank Ltd.
Having its branch office at Prestige
Chambers, Chinchwad,
Pune 19**

**2. Subhash Kisan Wagh
Age adult, Occupation business
Having address as Rupali Painters
7/77, M.I.D.C., Bhosari,
Pune 26**

**3. Vishnu Bhagoji Nandwadekar
Age adult, Occupation business
Residing at Survey No. 8-A,
Opp. Swwami Samarth Mandir,
Vastu Udyog,
Primpri, Pune 17**

**4. Sadashiv Bhujangrao Deshmukh
Age Adult, Occupation business
Residing at Scheme No. 11,
Sector 21, Yamuna Nagar,
Nigadi, Pune 44**

**5. Pimpri Chanchwad New Township
Development Authority,
Pimpri Chinchwad, Pune**

.. Respondents

Shri. Ruturaj Pawar a/w Shri. Chetan Patil, for the Petitioner.
Shri. S.S. Kanetkar, for Respondent No. 1.

CORAM : M.S. SONAK, J.
DATE : 23 JANUARY 2015

JUDGMENT :-

1. Rule, with the consent and at the request of the Learned Counsel for the parties, made returnable forthwith and heard.

2. This Petition challenges the Order dated 05 December 2014 made by the Co-operative Court, Pune and the Order dated 09 December 2014 made by the Maharashtra State Co-Op. Appellate Court, Mumbai, declining the Petitioner liberty to file her Written Statement in Co-operative Dispute No. 221 of 2000.

3. The reason stated by the Petitioner for not filing the Written Statement is that thought the dispute was raised in the year 2000, the Petitioner was impleaded as a party thereto in the year 2004. As against the order directing her impleadment, the Petitioner had preferred the Revision Application before the Maharashtra State Co-Op. Appellate Court (Mumbai) Bench at Pune, which was dismissed on 08 April 2008. It is the case of the Petitioner that

necessary instructions had been given by her to her Advocate to file the Written Statement and therefore, the Petitioner was under bonafide impression that such Written Statement had been filed. In February 2014, the Petitioner was required to disengage the said Advocate and engaged a new Advocate in his place. On 01 December 2014, it was noticed by the new Advocate that no Written Statement had been filed by and on behalf of the Petitioner. In these circumstances, leave was sought to file the Written Statement.

4. Shri. Pawar, Learned Counsel for the Petitioner pointed out that the Petitioner had nothing to gain by delaying the filing of the Written Statement. The Petitioner had no doubt taken up the issue of impleadment before the Revisional Court, but the same was decided against her on 08 April 2008. The Petitioner was diligently pursuing the matter and was under bonafide impression that the Written Statement on her behalf has been filed. It was however, discovered in December, 2014, when the Petitioner engaged a new Advocate, that in fact, there was no Written Statement filed by and on her behalf. The explanation offered is bonafide and consequently the same ought to have been accepted. The Learned Counsel for the Petitioner, upon taking instructions from the Petitioner, also volunteered to pay costs of Rs. 1,00,000/- in favour of

Respondent No. 1 Bank, in the event, the Petitioner is granted leave to file her Written Statement. The Learned Counsel also submitted that the Petitioner would not delay the proceedings, in respect of which there was already a direction from this Court for expeditious disposal. For all these reasons, the Learned Counsel, with vehemence, submitted that the impugned orders be set aside and a liberty be granted to the Petitioner to file her Written Statement in the matter.

5 . Shri. Kanetkar, the Learned Counsel appearing for Respondent No. 1 Bank submitted that the reasons offered do not inspire confidence and the same were rightly rejected both by the Co-operative Court, Pune as well as the Maharashtra State Co-Op. Appellate Court Mumbai Bench at Pune. There was no reason to interfere with the concurrent view taken by the two Authorities, particularly, since the delay involved in filing of the Written Statement was both large and unexplained. For these reasons, the Learned Counsel submitted that the impugned orders may not be interfered with.

6 . Having heard the Learned Counsel and perused the records, it is true that the Petitioner ought to have been more diligent in the matter. However, the explanation offering for the non

filing of the Written Statement does not smack off any malafides. The Petitioner was impleaded by the party Respondent sometime in the year 2004. As against her impleadment, the Petitioner had preferred the Revision Petition before the Maharashtra State Co-Op. Appellate Court Mumbai Bench at Pune, which was being pursued by her. The same Revision Application filed by the Petitioner was dismissed only on 08 April 2008.

7. In these circumstances, it is very much possible that the Petitioner genuinely believed that the Written Statement had been filed by and on her behalf. No doubt, permitting the Petitioner to file the Written Statement, at this stage, is likely to cause some prejudice to the Respondent No. 1 Bank, which is the original disputant. However, the prejudice is certainly compensable in terms of exemplary costs. The Petitioner has volunteered to pay costs of Rs. 1,00,000/-, which in the facts and circumstances of the present case would afford more than sufficient compensation to the Respondent No. 1 Bank, for the prejudice which may now be occasioned to Respondent No. 1 Bank.

8. It is further come on record that the Petitioner is the wife of Respondent No. 2 who is the principal borrower to the

Respondent No. 1 Bank. The dispute that raised principally concerns recovery of the loan amount obtained by Respondent No. 2 from Respondent No. 1 Bank. The Petitioner, without prejudice has stated that from out of the costs of Rs. 1,00,000/- volunteered to be paid by her, at least Rs. 50,000/- may be credited to the loan account of Respondent No. 2. This of Course, without prejudice to the rights and contentions raised by both Petitioner as well as Respondent No. 2, in the matter of their defences. Such request, in the facts and circumstances of the case, is reasonable.

9. Accordingly, the impugned Orders dated 05 December 2014 and so also 09 December 2014 are quashed and set aside. The Written Statement of the Petitioner be taken on record. The Petitioner to pay to the Respondent No. 1 Bank directly an amount of Rs. 1,00,000/- (Rupees One Lakh only) as volunteered by her, within a period of one week from today. Out of the amount of Rs. 1,00,000/-, the Respondent No. 1 Bank shall retain the amount of Rs. 50,000/- (Rupees Fifty Thousand only) as and by way of exemplary costs. The balance Rs. 50,000/- (Rupees Fifty Thousand only) shall be credited in loan account of Respondent No. 2. As indicated earlier, this shall be without prejudice to rights and contentions of all parties concerned.

10. In pursuance of the aforesaid, in case the Petitioner desires to lead any evidence, she may be permitted to do so. Respondent No. 1 Bank shall obviously have liberty to cross examine the Petitioner, if and when she steps into the witness box. However, all this shall be completed expeditiously and in any case within a period of six weeks from today. Proportionately, the time for disposal of the dispute by the Co-operative Court is extended upto 31 March 2015.

11. It is made clear that the Written Statement is to be taken on record, only after the Petitioner offers proof of having paid to Respondent No. 1 Bank an amount of Rs. 1,00,000/- as aforesaid. In the event, such amount is not paid within one week, then this Petition shall be deemed to have been dismissed and orders impugned therein shall operate. The Petitioner is present in the Court and has instructed her Advocate to offer a payment of Rs. 1,00,000/- to the Respondent No. 1 Bank on the aforesaid terms.

12. Rule is made absolute to the aforesaid extent.

[M.S. SONAK, J.]