

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5809 OF 2014

Smt. Kanchan Kishor Patil.] ... Petitioner

Versus

Pundalik Krushna Patil and Others.] ... Respondents

Mr. R. D. Suryawanshi for Petitioner.

Mr. Onkar V. Warange for Respondent Nos.1 to 5.

CORAM :- M. S. SONAK, J.

DATE :- MARCH 17, 2015

P. C. :-

1. Rule. With the consent of and at the request of the learned Advocates for the parties, the Rule is made returnable forthwith.

2. This Petition is directed against the Order dated 02/12/2013 by which the Civil Judge, Junior Division, Wada, has dismissed the Petitioner's application dated 22/03/2013 for recall of "No WS Order" dated 27/02/2013.

3. There is, undoubtedly, some negligence on the part of the Petitioner in the matter of filing her Written Statement. However, as discussed hereinbelow, the negligence is not of such a nature as to deprive her altogether of the opportunity to file the Written Statement. Accordingly, this is a fit case where Petitioner can be permitted to file the Written Statement subject to payment of costs in favour of Respondent Nos.1 to 5, who are the original Plaintiffs in the matter. The learned Advocate for the Petitioner, on instructions from the Petitioner, has volunteered to pay costs of Rs.25,000/-, which, in my judgment, is reasonable considering the facts and circumstances.

4. The Civil Suit No.688 of 2011 was instituted on 29/07/2011 in the Court of Civil Judge, Junior Division, at Bhiwandi. Summons issued to the Petitioner was made returnable on 07/01/2012, on which date the Petitioner attended the Court and applied for some time to file the Written Statement. Thereafter on 29/01/2012, on account of some re-organizing exercise, the Suit was transferred to the Court of Civil Judge, Junior Division, at Wada and re-numbered as Civil Suit No.72 of 2012. The Court to which the Suit was transferred, issued fresh notice to the Petitioner Plaintiff as well as the Defendants sometime in April 2012. It is the case of the Petitioner that such notice was received by her sometime in December 2012 and in pursuance thereof, she appeared before the Wada Court on 23/01/2013. On this date, she applied for some time to file

Written Statement and time was granted up to 27/02/2013, on which date, the Civil Judge at Wada made a “No WS Order”, since the Petitioner did not file her Written Statement by the said date.

5. On 22/03/2013, the Petitioner applied for a recall of the “No WS Order” made on 27/02/2013. It is the case of the Petitioner that 22/03/2013 was the 89th day from the date of receipt of summons from the Wada Court, to which the Suit has since been transferred. The Civil Judge, Junior Division at Wada, by the Impugned order dated 02/12/2013, has rejected the said application by observing that the delay in filing the Written Statement was over one year and that there was no sufficient cause disclosed.

6. I have heard the learned Advocates for parties and perused the record. In my judgment, the impugned order is liable to be set aside, subject, of course, to the Petitioner paying the costs of Rs.25,000/- in favour of Respondent Nos.1 to 5. This is because although there is some negligence on the part of the Petitioner, the circumstance that the Suit was transferred from the Bhiwandi Court to the Wada Court cannot be ignored. Further, the Wada Court did issue fresh summons to the parties and such fresh summons was received by the Petitioner sometime in December 2012, calling upon her to appear on or about 21/11/2013. In these circumstances, it is not unreasonable that the Petitioner regarded the returnable date in the second summons as the

starting point for the purposes of filing of the Written Statement. If the application made by the Petitioner on 22/03/2013 is perused, then it cannot be said that no case of any sufficient cause was at all made out. The application dated 22/03/2013 was made within a period of 90 days from the date of receipt of second summons in the matter.

7. Therefore, upon cumulative consideration of the aforesaid circumstances, interest of justice would be met if the impugned order dated 02/12/2013 is set aside subject to the Petitioner paying costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) in favour of Respondent Nos.1 to 5 within a period of four weeks from today. Accordingly, Rule is made absolute in terms of prayer clause (a). The Petitioner to pay costs, as aforesaid, and file her Written Statement within a period of four weeks from today.

8. There shall be no separate order of payment of costs so far as this Petition is concerned.

(M. S. SONAK, J.)