

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9327 OF 2011

Kumat Kiran Stores	..	Petitioner
vs.		
M/s. Dhanlaxmi Sales Corporation	..	Respondent

Mr. Jaydeep Deo for Petitioner.

CORAM : M. S. SONAK, J.
DATE: 18 MARCH 2015

P.C. :-

- 1] The learned counsel for the petitioner places on record envelopes with regard to service of notice upon the respondent, which indicate the endorsement 'not claimed'.
- 2] Rule. Rule returnable forthwith.
- 3] On 27 March 2014, the Registrar (Judicial – I) has recorded that the respondent no. 1 is reported to be dead 'prior to four years' as per bailiff's report. The respondent no. 1 in the present case is a partnership firm, which was the original plaintiff in civil suit no. 1912 of 2006.
- 4] This petition challenges order dated 23 June 2011, by which the 2nd Jt. Civil Judge, Senior Division Pune has declined to recall 'No WS Order' dated 12 November 2010.
- 5] The records would indicate that there was delay of about four months in the matter of filing of written statement. The medical certificate has been produced to explain the delay. The medical

certificate indicates that the defendant has contracted viral fever. The learned Civil Judge is right in observing that the ailment was not of such nature as would prevent the petitioner from filing written statement. Nevertheless, this is not a case of such negligence, as would require the petitioner to suffer 'No WS Order'. The reason as set out in the application seeking recall are required to be cumulatively considered. Reasons indicate that written statement was prepared, but could not be filed, because of the ailment. In the circumstances, the petitioner could always have been saddled with some costs as a pre-condition for taking on record the written statement.

6] For the aforesaid reasons, the impugned order dated 23 June 2011 is set aside subject to the petitioner paying to the plaintiff costs of Rs.7,500/- within a period of four weeks from today, or such costs can be deposited in the Court of 2nd Jt. Civil Judge, Senior Division at Pune, and such deposit shall be regarded as sufficient compliance. Upon satisfaction that such costs have indeed been paid by the petitioner or deposited, the Civil Judge to take on record the petitioner's written statement and thereafter proceed with the suit in accordance with law.

7] Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs.

(M. S. SONAK, J.)