

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7929 OF 2016

Raju Laxman Bhojne and Anr. ... Petitioner
Vs.
Dyaneshwar Tukaram Nalawade and Ors. ... Respondents

Mr. S.D. Hiwrekar, Advocate for the petitioner.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 02-08-2016.

Per Court :

1. Heard learned counsel for the petitioner.
2. The petitioner who is plaintiff in Regular Civil Suit No. 1226 of 2014 pending before Civil Judge, Junior Division Ashti, purports to have been aggrieved by direction under an order dated 05-04-2016 whereunder request of the defendant to accept belated payment of cost awarded under order dated 06-10-2015 has been allowed.
3. Learned counsel for the petitioner contends that, having regard to the judgments which are being cited and relied on, and further that, no plausible reason has been given in the application for acceptance of belated payment of cost, it was but incumbent to have rejected the application or in the least higher cost ought to have been awarded.

4. Learned counsel purports to rely on a judgment in the case of **Vidyut Enterprises and Ors. V/s. Popatlal Fulchand Sundesha and Ors.** reported in **2010 (3) MLJ 134**. Learned counsel refers to observations as are appearing in paragraph no. 5 and 6 wherein it has been observed as under:

"5. We feel that the suit involves high stakes for both parties and it would not be in the interest of justice to dismiss the suit merely on ground that the learned Advocate for the petitioners could not produce this copy of the Pay Order at the time of the making of the application on 22nd December, 2009. It is however correct that the petitioners delayed in payment of the costs of Rs. 1,50,000/- to the respondents by about seven days in view of the aforesaid mistakes on their part. There was then further delay and inconvenience caused by the petitioners being unable to produce the said Pay Order, on the date of mentioning of the Appeal. We feel that it is hence reasonable to impose an additional cost of Rs. 25,000/- on the petitioners to be paid to the respondents.

6. The review petitions are, therefore, allowed to the extent that the order, dated 22nd December, 2006, dismissing the applications to direct the respondents to accept the Pay Order is set aside. However, the petitioners are directed to pay costs of Rs. 1,75,000/-, which includes additional costs of Rs. 25,000/-, to the respondents within one week from today. The petitioners shall also forward copies of the written statements to the Advocate for the respondents along with the pay order within one week from today. In the event of the petitioners failing to comply with the directions given herein the review petitions shall stand dismissed without reference to this Court. Upon payment of the said amount by the petitioners to the Advocate for the respondents and production of the necessary acknowledgement by the petitioners, office to take the written statements of the petitioners on record."

The case does not relate to the factual scenario as involved in present matter and had been dealing with a different set of facts.

5. In the judgment cited by learned counsel, in the case of **Smita Arvinda Apte and Anr. V/s. Ajay Pandurang Potdar** reported in **2006 (2) MLJ 509**, as a matter of fact, it appears and it will have to be considered that following observation, from a supreme court judgment have weighed with the court:

"All the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the Civil Procedure Code or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice."

The Hon'ble Single Judge in order observed in paragraph no.4 as under:

"4. There is no dispute that the trial Court has admittedly, granted an application of the defendants to take written statement on record. That order remained final. Therefore, by the impugned order, it is very clear that the defendants would not be in a position to file the written statement, even though, it was ordered to be and permitted to be taken on record. After reading the order, it is very clear that the defendants-petitioners would suffer injustice only because, they failed to deposit the cost within

stipulated time. It is true that no sufficient reason have been made out in the application for not depositing the amount within stipulated time. However, considering the nature of dispute between the parties and considering the fact that the Court has already granted permission to the defendants to file the written statement. I am of the view that for want of not depositing cost within stipulated period the party should not be deprived of their rights to contest the proceeding by filing a written statement."

This was a case wherein, it was the defendant who had been required to come before the high court, since his request, for extending time for payment of cost upon failure to deposit as directed, had been rejected. In that, aforesaid observations have occurred as referred to above.

6. Aforesaid observations as reproduced in paragraphs no. 5 and 6 are pointer to that, the matters are not to be looked at pedantically and would be given treatment in order to further the cause of justice rather than getting entangled into procedural technicalities.

7. Learned counsel, however, insists upon enhancement of cost over and above Rs. 1,000/- granted by trial court. In the circumstances, it may be appropriate that, there shall be modification of order to the extent of enhancement of cost only, and to enhance the cost by additional Rs. 1,000/- more.

8. Looking at the circumstances, I deem it appropriate, the cost having been not paid within stipulated time be enhanced to Rs. 2,000/- in aggregate. As such, the respondents-defendants to pay an additional amount of Rs. 1,000/- as by way of cost, over and above Rs. 1,000/- awarded by trial court and deposit the same in the trial court. With aforesaid, writ petition stands rejected and disposed of.

(SUNIL P. DESHMUKH)
JUDGE