IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1336 OF 2015

SHRI. MANOHAR YESHWANT KHOTRE ...Petitioner
Versus
SHRI. RAMKRUSHNA KHANDU LATHAD
AND ORS. ...Respondents

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Mr. S.T. Bhosale h/f. Dilip Bodake, Advocate for the Petitioner.
Mr. Dnyaneshwar J. Deshmukh, Advocate for Respondent No.1.
Mr. A.R. Metkar, AGP, for respondent Nos.2 and 3.
Ms. Raksha Thakkar a/w. Mr. Minoo Siodia i/b. M/s. Rustamji & Ginwala, for Respondent No.4.

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CORAM : R. G. KETKAR, J.

DATE : 02nd APRIL, 2016

P.C.

1. Heard Mr. S.T. Bhosale, learned Counsel for the petitioner, Mr. Dnyaneshwar Deshmukh, learned Counsel for respondent No.1, Mr. A. R. Metkari, learned AGP for respondent Nos.2 and 3 and Ms. Raksha Thakkar, learned Counsel for respondent No.4, at length.

2. Rule. Learned Counsel for the respondents waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final

hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 26.8.2014 passed by the learned Civil Judge, Senior Division, Vaduj below Exhibit-69 in R.C.S. No.20/2011. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as defendant No.1, for extending time for depositing costs of Rs.300/- and accepting the written statement on record.

4. Respondent No.1, hereinafter referred to as the 'plaintiff', has instituted the Suit against defendant No.1 and respondent Nos.2 to 4, hereinafter referred to as 'defendant Nos.2 to 4; for declaration that the certificate of residence issued in favour of defendant No.1 is illegal and consequently it be declared that defendant No.1 is not eligible for appointment as a distributor for Mayani, Taluka-Khatav under Rajiv Gandhi LPG Distribution Scheme, amongst other reliefs.

5. Defendant No.1 did not file written statement. The learned trial Judge therefore passed 'No WS' order against

defendant No.1. On 26.6.2012, defendant No.1 filed application Exhibit-49 for setting aside no ws order. On 18.9.2012, the learned trial Judge allowed that application subject to payment of costs of Rs.300/-. As no costs was paid, the learned trial Judge passed following order below Exhibit-49 :

"No costs paid. Hence filed.
Sd/- 11.6.2013"

6. By the impugned order, the learned trial Judge dismissed the application Exhibit-69. It is against that order, defendant No.1 has instituted the present petition.

7. By order dated 20.7.2015, notice was issued to the respondents and in the meantime ad-interim relief in terms of prayer clause (c) was granted subject to defendant No.1 depositing an amount of Rs.10,000/- in this Court before the next date of hearing.

8. Mr. Bhosale states that defendant No.1 has deposited Rs.10,000/- in this Court. Perusal of the order dated 18.9.2012 shows that the learned trial Judge allowed the application Exhibit-49 and set aside 'No WS' order subject to payment of costs. However, no time limit was stipulated for payment of

costs of Rs.300/-. As defendant No.1 did not pay the costs, on 11.6.2013 the learned trial Judge filed application Exhibit-49 thereby meaning the learned trial Judge rejected the application Exhibit-49. Defendant No.1, therefore, took out application Exhibit-69 which is dismissed by the impugned order. In my opinion, the learned trial Judge having set aside No WS order on 18.9.2012 and also not stipulating time within which the cost is to be paid, was not justified in dismissing the application. Instead, the learned trial Judge should have directed defendant No.1 to pay costs over and above Rs.300/-. As now defendant No.1 has deposited Rs.10,000/- in pursuance of the order dated 20.7.2015, in my opinion, the ends of justice will be served by permitting respondent No.1/plaintiff to withdraw that amount as defendant No.1 has already requested for taking WS on record. Hence, the following order :

[i] Impugned order dated 26.8.2014 is set aside. Learned trial Judge will accept WS of defendant No.1 on record and proceed with the suit in accordance with law.

[ii] Respondent No.1/plaintiff is permitted to withdraw Rs.10,000/- deposited in this Court unconditionally.

Amount so deposited in this Court shall be transmitted to the Court of Civil Judge, Senior Division, Vaduj, District–Satara in RCS No.20/2011.

[iii] Rule is made absolute in aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)