

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

Writ Petition No. 4546 of 2015

[Kantaben Amritlal Goradia Vs. Shri Govardhan s/o Ramchandra Lakhotiya]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri H. R. Gadhia, Advocate for the petitioner
Shri A. Shelat, Advocate for the respondent

CORAM : Prasanna B. Varale, J.

DATE : 1-2-2016.

Heard learned counsel for the parties.

The petition is filed challenging the order passed by the learned Additional Judge, Small Cause Court, Nagpur awarding costs of 100/- per day for a delay of 165 days in filing the written statement.

The brief facts giving rise to the present petition are as follow :

The respondent-landlord filed the suit for ejectment and possession against the present petitioner-tenant. The suit summons was served on the petitioner on 18-9-2014. The petitioner caused her appearance in the suit on 24-9-2014. It was the submission of Shri Gadhia, learned counsel for the petitioner that the petitioner, who is a old aged lady, could not instruct her counsel in time resulting in non-filing of written statement within the prescribed time of 90 days. It was the submission of Shri Gadhia that period of 90 days was expired on 17-12-2014.

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The petitioner submitted an application on 27-4-2015 for setting aside 'No W.S.' order which was passed by the Court below. The application was opposed by the respondent. The learned Judge on the ground that though the suit summons was served on the petitioner/defendant on 18-9-2014 and though the defendant has appeared on 24-9-2014 and sought time to file W.S., did not bother to file W.S. nor took any steps for seeking extension of time. On 15-11-2015, order of without W.S. was passed. Meantime, the plaintiff has filed the chief examination on affidavit. The matter was then fixed for final argument and at that point of time, an application was moved by the defendant/petitioner seeking permission to file W.S. by condonation of delay. The learned Judge found that the application was moved in a casual manner and though the ground of ailment was raised, the same was not supported with any certificate. The learned Judge then found that it would be in the interest of parties to have adjudication of the matter on its merits instead of going into technicalities. By awarding costs, the defendant is permitted to file W.S. on record and that would sub-serve the ends of justice. The learned Judge observed that there is a delay of 165 days from 15-11-2014 to 29-4-2015 and awarded the costs of Rs. 100/- per day for 165 days.

Shri Gadhia, learned counsel for the petitioner submitted that the learned Judge took a hyper-technical approach and calculated the delay of 165

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days caused at the hand of the petitioner/defendant whereas the Act itself provides 90 days period and the delay if any could have been considered of those days subsequent to the 90 days prescribed period. The other submission of Shri Gadhia was the petitioner is an old aged lady and the amount of Rs. 16,500/- awarded as costs would be an exorbitant amount. Shri Gadhia submitted that the learned Judge in similar set of circumstances took a lenient view and by order dated 15-4-2015 permitted another defendant to file W.S. on record by awarding costs of Rs. 450/-. Submission of Shri Gadhia was the learned Judge ought to have taken an approach of uniformity in awarding the costs and could not have awarded the exorbitant costs in the matter of petitioner and by taking lenient view in another matter, could have awarded costs of Rs. 450/-. Shri Gadhia, learned counsel invited my attention to the order passed by this Court dated 7-10-2015. He submitted that this Court permitted the trial Court to continue with the proceedings and cautioned the trial Court not to stay the proceedings merely because the writ petition is pending before this Court.

Shri Shelat, learned counsel for the respondent supported the impugned order in the present petition. He invited my attention to the judgment of this Court reported in **2015(5) Mh.L.J. 188** in the case of **Rameshlal s/o Girdharidas Kukreja Vs. Yogesh s/o Namdeorao Jogi and anr.** He fairly

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submitted that this Court in similar circumstances observed that if reason pleaded appears satisfactory or sufficient to condone delay, delay may be so condoned subject to payment of reasonable costs. The same view be adopted in the present matter and no prejudice would be caused to any of the parties.

On these rival submissions of learned counsel, I have gone through the material placed on record. As the issue and controversy involved is limited only to aspect of awarding costs, there is a merit in the submission of Shri Gadhia that the learned Court below could have calculated the period after 90 days of prescribed period instead of calculating erroneously 165 days and if the Court took some liberal approach in awarding the costs of Rs. 450/- in one litigation, it should not have awarded exorbitant costs of Rs. 16,500/- for 165 days i.e. from 15-11-2014 to 29-4-2015 in another matter. As in somewhat similar circumstances, this Court considered this aspect in the judgment of ***Rameshlal s/o Girdharidas Kukreja Vs. Yogesh s/o Namdeorao Jogi and anr*** (cited supra), I see no reason to take a different view than the view taken by this Court in the case cited supra. The ends of justice would be met by modifying the order impugned in the present petition to the effect that the petitioner/defendant to pay costs of Rs. 5,000/- instead of Rs. 16,500/- as awarded by the learned Small Cause Court, Nagpur within a period of four

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weeks from today. Considering the fact that the suit is pending before the Court. In view of request made by Shri Shelat, learned counsel for the respondent for directions to Court below to decide the suit in a time frame, the learned Judge is directed to decide the Regular Civil Suit as expeditiously as possible and preferably within a period of eight months from the date of receipt of the order.

With these directions, the writ petition is disposed of.

JUDGE

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