

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

WRIT PETITION NO. 93 OF 2016

Rameshchandra s/o Satyanarayan Soni, thr. P.O.A. Basantkumar Rameschandra Soni

-vs-

M/s. Shriram Food Products, Nagpur, thr. Prop.Smt.Shakuntaladevi Chainsukh Loya & others

WITH

WRIT PETITION NO. 94 OF 2016

Rameshchandra s/o Satyanarayan Soni, thr. P.O.A. Basantkumar Rameschandra Soni

-vs-

M/s. Bhagwati Trading Company, thr. Prop. Shrikant Rajendraprasad Soni and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

W.P. No.93 of 2016

Petitioner in person.

Mr. S.V.Bhutada, counsel for the respondent Nos.1 and 2.

Mr. N.R.Patil, AGP for the respondent No.3.

W.P. No.94 of 2016

Petitioner in person.

Mr. S.D.Khati counsel for the respondent Nos.1 and 2.

Mr. N.R.Patil, AGP for the respondent No.3.

CORAM : SMT. VASANTI A. NAIK &
V.M.DESHPANDE, JJ.

DATE : 29.04.2016.

The petitioner has filed these writ petitions through his power of attorney holder Shri B.R.Soni, who states that he is a practising lawyer at Hyderabad.

By these two writ petitions, the petitioner seeks a declaration that the taxation of suit costs under the impugned decree that is passed by the Small Causes Court is illegal and not in consonance with the taxation of suit costs. The petitioner seeks a declaration that the imposition of the upper limit of maximum costs at Rs.2,000/- as per the provisions of Section 36 of the Maharashtra Rent Control Act, 1999 is arbitrary and illegal.

The petitioner had filed suits for eviction and possession against the respondents. The civil suits were also filed by the petitioner

through the power of attorney holder Shri B. R. Soni. A decree for eviction and possession was passed by the trial Court in both the suits, directing the eviction of the respondents herein from the tenanted property. The respondents/original defendants were directed to hand over the peaceful possession of the property to the plaintiff/petitioner within a period of ninety days. The trial Court directed the defendants to bear their own costs along with costs of the plaintiff. The petitioner is not aggrieved by the judgment and decree for eviction, but is aggrieved by the imposition of lessor costs on the defendants.

The petitioner has not sought permission to appear in person and has also not engaged a counsel. Permission was sought by the power of attorney holder for the petitioner i.e. Shri B. R. Soni to appear on behalf of the petitioner, in person. It is held by the Hon'ble Supreme Court in the judgment, reported in **AIR 78 SC 1019 (Harishankar v. Girdhari)** that a motion for prior permission of the Court to permit a person to argue for a party should come from the party himself. In the present case, the application for permission to appear through the power of attorney holder did not come through the petitioner, Shri R.S.Soni, but was filed by Shri B.R. Soni, the power of attorney holder. Be that as it may, since the Registrar has, by an order, dated 14/12/2015 observed that the petitioner could be granted permission to appear and argue the matter through the general power of attorney holder, we have heard the general power of attorney holder for the petitioner, at length.

The petitioner has challenged the part of the decree that grants limited costs to the petitioner. According to the petitioner, in the bill of costs, there is a reference only to the Court fees, the stamp on the deed of power of attorney, pleaders fees, and the process fees, though in view of the provisions of Clause 639A of the Civil Manual, a successful party is entitled to transportation and lodging fees and also costs towards compensation for the time spend by the successful party in litigation. According to the petitioner, the suits filed by the petitioner are decreed by the trial Court and as many as fifty adjournments were

sought on behalf of the respondents for cross-examining the witnesses for the plaintiff/petitioner. It is stated that heavy costs ought to have been imposed upon the defendants for delaying the matter. It is stated that Shri Bhutada, the counsel for the respondents had deliberately delayed the matter by remaining present in the trial Court only at 4.30 or 5.00 p.m. It is stated that an application filed by the respondents for framing of issues was dismissed by the trial Court and such orders would show that the defendants/respondents were deliberately seeking adjournments with a view to protract the suits filed by the petitioner/plaintiff for eviction and possession. It is stated that only after the High Court directed the trial Court to decide the matter within a time frame that the suits filed by the petitioner/plaintiff were decided. It is stated that in the circumstances of the case, heavy costs are liable to be imposed on the respondents. It is submitted that Section 36 of the Maharashtra Rent Control Act, 1999 that provides for imposition of costs to the extent of Rs.2,000/- is arbitrary and illegal inasmuch as, even if a claim is false or vexatious, the Court is not empowered to impose higher costs. The power of attorney holder for the petitioner relied on the judgments, reported in 2011 AIR SCW 4000 (Ramrameshwari Devi v. Nirmala Devi) and (2005) 6 SCC 344 (Salem Advocate Bar Assn. v. Union of India) to seek the imposition of exemplary costs on the respondents/defendants.

Shri Bhutada and Shri Khati, the learned counsel for the respondents, opposed the prayer made by the petitioner. It is submitted that the petitioner is in the habit of vexing the Courts. It is stated that there are three Small Cause Judges in Nagpur and as and when an adverse order is passed against the petitioner, the petitioner, through his power of attorney holder Shri B.R.Soni files an application for transfer of the case from the concerned Judge to some other Small Causes Court. It is stated that the cases of the petitioner could now be heard by only one of the three Small Cause Judges. It is stated that the power of attorney holder for the petitioner tries to browbeat the Courts and this fact could be depicted from an order passed by the Chief

Metropolitan Magistrate, Hyderabad, dated 14/07/2014 in C.C. No.162 of 2014, where it is observed that the power of attorney holder Shri B.R.Soni has addressed the Court in a discourteous way, shouted in the open Court and disturbed the proceedings. It is stated that proceedings had been filed against the power of attorney holder for the petitioner in the Court at Hyderabad for the offences punishable under Sections 324 and 506 of the Indian Penal Code for assaulting his grandfather. It is stated that the petitioner has not approached this Court with clean hands and the petitions are filed with a view to vex the Court as well as the respondents. It is denied by the respondents that more than 50 adjournments were sought by the respondents when the civil suits were posted for the cross-examination of the witnesses of the plaintiff/petitioner. It is submitted that applications were filed by the petitioner as well as the respondents and some applications filed by the petitioners and some filed by the respondents were rejected. It is stated that this would however not mean that the respondents had vexatiously filed the applications only with a view to protract the proceedings. It is stated that the provisions of Section 36 of the Maharashtra Rent Control Act, 1999 cannot be challenged by the petitioner, in the circumstances of the case. It is stated that the said provisions are applicable when a litigation is launched vexatiously or an application is filed vexatiously and a finding in regard to the vexatious filing of the proceedings is recorded by the trial Court. It is stated that the proceedings in the present case were not filed by the respondents, but were filed by the petitioner and if the petitioner had succeeded in the matter, the petitioner cannot resort to the provisions of Section 36 of the Maharashtra Rent Control Act. It is stated that false and baseless allegations have been made against the counsel for the respondents just to intimidate them. It is submitted that the writ petitions be dismissed with heavy costs.

On hearing the power of attorney holder for the petitioner and the learned counsel for the respondents, we find that the writ petitions are liable to be dismissed with costs. The petitioner had filed

two suits before the Small Causes Court against the respondents seeking their eviction from the suit property. We do not find on a reading of the documents annexed by the petitioner to the writ petitions that the defendants/respondents had sought adjournments every time and the matter was adjourned at their behest for protracting the proceedings.

Like in all other matters, the bill of costs in this case includes the pleader fees, the Court fees, the fees on the document of power of attorney and the process fees. It is necessary to note that the petitioner had through his power of attorney holder on 19/08/2015 applied vide Exhibit-13 for withdrawal of the costs that were liable to be paid by the defendants. After filing the said application on 19/08/2015, without any cause, the writ petition was filed on 29/09/2015. The petitioner had not sought the withdrawal of the costs under protest. After seeking the withdrawal of the costs, the petitioner has approached this Court for a direction that the trial Court ought to have imposed exemplary costs on the defendants for raising false and baseless pleas in the written statement. Though it is observed by the trial Court in the order dated 15/04/2013 that the defendant in the suit had filed the application with an intention to protract the proceedings in the trial Court, it is also informed by the learned Judge of the Small Causes to the Principal District Judge, Nagpur that the power of attorney holder for the plaintiff/petitioner is creating obstacles in the progress of the suit on one or the other count and is interfering in the administration of justice and the Court proceedings. Be that as it may, we are not inclined to consider the observations made by the learned Small Causes Court against the respondents in one of the orders and against the power of attorney holder for the petitioner in the communication addressed by the learned Small Causes Judge to the Principal District Judge, Nagpur in these writ petitions.

The power of attorney holder for the petitioner fairly admits that at least ten writ petitions have been filed in this Court by the petitioner through his power of attorney holder Shri B.R.Soni,

assailing various orders. It is not disputed that yesterday one more writ petition is filed by the petitioner through his power of attorney holder. We have given patient hearing to the power of attorney holder for the petitioner for more than an hour. The said time was consumed at the cost of the other litigants and counsel. Though several allegations have been made against the respondents for delaying the trial Court proceedings, a copy of the *roznama* in those proceedings is not annexed by the petitioner to these writ petitions. Only the case history downloaded from the website is annexed. It is not possible to gauge from the said document that is annexed at Annexure-F, whether the adjournments were sought only at the behest of the respondents and/or there were some other reasons for the adjournments. In any case, this cannot be a matter of consideration in a writ petition under Article 226 of the Constitution of India.

We find on a reading of the provisions of Section 36 of the Maharashtra Rent Control Act, 1999 that if a suit, proceeding or application is not instituted *bona fide*, and if the same is filed frivolously or vexatiously, the Court may after hearing the plaintiff or applicant for reasons to be recorded in writing, order that compensation, not exceeding Rs.2,000/- be paid by the plaintiff or applicant. In the instant case, the plaintiff was the petitioner himself. The petitioner has not pointed out before the trial Court that costs of more than Rs.2,000/- should be imposed upon the respondents/defendants, whenever any application of the respondents is dismissed. It is informed that the trial Court has dismissed some applications filed by the plaintiff and some by the defendants. If that be so, as per the submission of the power of attorney holder for the petitioner, costs will have to be imposed on the petitioner as well as the respondents. In any case, we are not inclined to consider the hypothetical questions, as posed, vide submissions made on behalf of the petitioner. There is no material, much less any material before the trial Court, as to why a particular amount of costs should be imposed on the defendants for vexatiously filing a particular application. At

least, such material is not placed before this Court. We find that the allegations, like the ones made against the counsel appearing on behalf of the respondents should not have been made in these writ petitions. The counsel have been practising in this Court for long and the allegations were unwarranted. Much time has been spent by this Court on hearing the power of attorney holder for the petitioner and for rendering the order, despite the fact that several urgent matters are listed on the board for admission and hearing. The judgments, reported in *AIR 78 SC 1019, 2011 AIR SCW 4000* and *(2005) 6 SCC 344* and relied on by the power of attorney holder for the petitioner are not applicable to the facts of these cases.

In the circumstances of the case, we dismiss the writ petition with costs of Rs.5,000/- to be payable by the petitioner to the High Court Legal Services Sub-Committee, Nagpur within a period of one week.

Order accordingly. No costs.

JUDGE

JUDGE