

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3774 OF 2015

Digambar s/o Jaywantrao Deshmukh
Age : 62 years, Occ. Agriculture,
R/o Shivaji Nagar, Post Sinnar,
Tq. Sinnar, Dist. Nashik

...Petitioner

Versus

1. Narmadabai Fakirrao Gadhave
Age : 67 years, Occ. Agriculture,
R/o. Soygaon, Post Jawalke,
Tq. Kopargaon, Dist. Ahmednagar.
2. Smt. Sitabai Ram Gadhave (now deceased),
Through L.Rs.-
- 2-A. Kailas Bhanudas Sadaphal,
Age : 58 years, Occ. Agriculture,
R/o. Shahpur, Post Jawalke, Tq. Kopargaon,
Dist. Ahmednagar.
- 2-B. Surekha Vijay Khairnar,
Age : 55 years, Occu. Agriculture,
R/o Chas (Kasarwadi)
Post Nandur Shingote, Tq. Sinnar,
Dist. Nashik.

...Respondents

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Mr. Shivaji T. Shelke, Advocate for petitioner
Mr. L. K. Pradhan, Advocate for respondent no. 1

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[CORAM: SUNIL P. DESHMUKH, J.]

Date: 13th June, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of advocates for appearing parties.

2. Petitioner is before this court aggrieved by orders dated 21st February, 2015 on exhibit-78, 3rd March, 2015 on exhibit-80 and 11th March, 2015 on exhibit-82 whereunder the request of petitioner to extend the date for compliance of direction under order dated 6th February, 2015 came to be rejected. Under order dated 6th February, 2015 on exhibit-75 filed by defendant no. 3 for setting aside ex-parte order dated 1st December, 2014, having regard to certain antecedents, petitioner-defendant no. 3 had been directed to deposit a sum of Rs.3,500/- and the application was allowed. It has been further observed that failure to deposit costs of Rs.3,500/- would result in rejection of application. Upon depositing the costs, it had been directed to take on record written statement of defendant no. 3 by setting aside *ex-parte* order.

3. It appears that, on the next scheduled date i.e. on

21st February, 2015, defendant filed application under the signature of the advocate stating therein that defendant no. 3 has gone to Mumbai and had not returned, and the advocate, on account of marriage ceremony of relative was out of station, as such, request was made to defer the date for payment of amount of costs.

4. Application exhibit-78, came to be rejected by trial court observing that order dated 6th February, 2015 allowing Exhibit-75 on costs is clear and speaking and no reason would be said to be made out to grant time.

5. On 3rd March, 2015, application exhibit-80 came to be filed by petitioner-defendant no. 3 requesting to accept amount of costs, which had been rejected. Thereafter, exhibit-82 an application giving reasons had been moved to consider the request of petitioner to set aside *ex-parte* order on exhibit-75 and accept written statement. Said application came to be rejected by the court on 11th March, 2015 observing that already thrice applications were rejected and no reason had been given to file present application. It had been further observed that defendant no. 3 is trying to prolong the proceedings for one or other reason.

6. Having regard to proximity of dates during which applications had been filed and further to that writ petition has been pending in this court since 2015, in order to have decision on merits rather than getting obfuscated by other aspects, it would be expedient that writ petition be allowed subject to deposit further sum of Rs.5,000/- (five thousand) by way of costs in addition to one as had been directed under order dated 6th February, 2015 by learned joint civil judge, junior division, Kopargaon.

7. In view of aforesaid, writ petition is allowed in terms of prayer clause (B) subject to payment of costs of Rs. 5,000/- in addition to the amount of costs of Rs.3,500/- directed under order dated 6th February, 2015 by joint civil judge, junior division, Kopargaon. Amount of costs be deposited before trial court within a period of four weeks from the date of receipt of writ of this order. Rule is made absolute, accordingly writ petition stands disposed of.

[SUNIL P. DESHMUKH, J.]