

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7471 OF 2017

Anusaya w/o Asaram Dongre,
Age-65 years, Occu-Househol/Agriculturist,
R/o Bhandgaon, Tq. Parner,
Dist.Ahmednagar

-- PETITIONER

VERSUS

The State of Maharashtra,
Through the Collector,
Ahmednagar..

-- RESPONDENT

Mr.D.R.Jaybhar, Advocate for the petitioner.
Mr.S.K.Tambe, AGP for the respondent/State.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 10/08/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 13/02/2015 by which the L.A.R. No.235/2011 was rejected under Order 7 Rule 11 of the Code of Civil Procedure as the petitioner has failed to deposit the court fees and implement the directions of the Court.

3. Having considered the strenuous submissions of the learned

Advocates for the petitioner and the learned AGP, I find that though the petitioner has instituted the land reference case in 2004, it was for the first time on 08/08/2011 that the said proceedings were registered and the petitioner was directed to deposit the court fees. A last chance was granted on 21/11/2012 by extending the period by 15 days. Yet, the petitioner did not deposit the court fees. Finally, by the impugned order dated 13/02/2015, the said proceedings were rejected.

4. Section 148 of the CPC permits enlargement of time by the Court whose directions have not been complied with by the plaintiff. Any direction given by the Court, by which a litigating side is to perform an act within a stipulated period, Section 148 would permit enlargement of time.

5. This Court, in the matter of Rajaram Dhanu Warade Vs The State of Maharashtra and another, WP No.6595/2012, has observed in its order dated 31/10/2012 that the court fees can be subsequently deposited. The proceedings u/s 18 were therefore restored. Similar are the orders passed by this Court on 13/10/2011 in WP No.7979/2011, order dated 08/03/2001 in Civil Revision Application No.180/2010 and the order dated 09/01/2017 passed by

this Court in WP Nos.4654/2016, 4657/2016 and 4658/2016. In all these orders, this Court has permitted the depositing of court fees and the restoration of the LAR proceedings.

6. Considering the above and keeping in view that the doors of litigation would be permanently closed on the petitioner if the impugned order is not set aside, I find that this petition can be allowed.

7. Learned AGP submits that no litigant should be permitted to take advantage of its own law. From September 2011 till August 2017, the petitioner failed to deposit the court fees. His claim in the LAR proceeding would include a claim for interest on the enhanced amount. Granting interest for the period of delay would amount to rewarding the petitioner.

8. Considering the above, this petition is partly allowed. The impugned order dated 13/02/2015 is quashed and set aside and LAR No.235/2011 is restored to the Court which has passed the impugned order. The litigating sides are agreeable to appear before the Trial Court on 01/09/2017. Request is accepted.

9. Needless to state, on the date of appearance before the Court, the petitioner shall enter an affidavit and shall mention that he shall not be entitled for interest on the enhanced compensation amount for the period of September 2011 to August 2017 and shall not make such a claim before any authority. Any such claim shall stand rejected.

10. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)