

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7953 OF 2017
(The Municipal Council, Kinwat, Through its Chief Officer Vs.
Agricultural Produce Market Committee, Kinwat,
Through its Secretary)

Mr.B.A.Darak, Advocate for the petitioner.
Mr.U.B.Bilolikar, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 10/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 22/11/2016, refusing extension of time to the petitioner to file a written statement, which is challenged on 05/06/2017 in this petition.
2. The petitioner appeared in Spl.C.S.No.36/2016 on 18/06/2016. It moved an application on 18/10/2016 Exhibit 28 seeking permission to file the written statement. By order dated 22/11/2016, Exh.28 is rejected.
3. Mr.U.B.Bilolikar, learned Advocate for the respondent has opposed this petition and prays for its dismissal with costs.

4. This Court had directed the petitioner to deposit an amount of Rs.10,000/- in this Court. The directions of this Court in paragraph Nos. 2 and 3 read as under :-

“2. Till the returnable date, there shall be ad interim relief in terms of prayer clause “E”, on condition that the petitioner deposits a sum of Rs.10,000/- (Rupees ten thousand), in this Court, within a period of four weeks from today.

3. In addition to court process, the petitioner to serve the respondent privately by any legally admissible mode and to file an affidavit with tangible proof of service. In case of failure to serve the respondent and file service affidavit stating that the respondent is served or not, at least a week before the returnable date and to deposit the amount as aforesaid within the time stipulated, the ad interim relief would cease to operate without further reference to the court.”

5. The petitioner has deposited Rs.10,000/- on 24/07/2017.

6. Considering the dates and events as noted above and keeping in view the principle of an opportunity of defending oneself in the Court proceedings, I find that the Trial Court should have allowed the petitioner to file its written statement. There is no dispute that the petitioner had failed to file its W.S. within time. However, it cannot be ignored that if the opportunity to file the W.S. is not granted, the petitioner would be defenceless in the pending suit.

7. I also do not find any laches or oblique motives attributable to the conduct of the petitioner as it is a public body and may have consumed time through the administrative process in preparing its written statement. The delay caused does not appear to be deliberate and cannot be termed as being inordinate. Since the learned Advocate for the petitioner informs that the suit is at the stage of recording of evidence, the Trial Court shall recast the issues after considering the averments in the W.S.

8. In the light of the above, this petition is allowed. The impugned order dated 22/11/2016 is quashed and set aside. Application Exh.28 is allowed and the W.S. filed by the petitioner alongwith Exh.28 shall be taken on record by the Trial Court.

9. Since the petitioner needs to be penalized for the delay and since the sole respondent has graciously consented to donate the costs to the Advocate Associations' Bar Library, High Court, Aurangabad, the amount of Rs.10,000/- deposited, alongwith interest, shall be deposited with the Advocate Associations' Bar Library, High Court, Aurangabad, by the Registry of this Court.

(Ravindra V.Ghuge, J.)