

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1808 OF 2016

SHRINATH NAGARI SAHAKARI PAT SANSTHA LTD.
VERSUS
RAJENDRA KERNATH BHANDARI AND OTHERS

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Advocate for Petitioner : Shri Thigale Girish K. (Naik)
Respondents 1 to 3 : Served

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 12, 2017

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PER COURT :-

1. Despite service of court notice, neither of the respondents had entered an appearance through an Advocate or in person.
2. The petitioner is aggrieved by the order dated 26.4.2014, by which, the learned trial Court has stayed its earlier order dated 19.9.2011.
3. Shri Thigale strenuously submits on behalf of the petitioner that the trial Court has passed an order on 19.9.2011, by invoking Order XXI Rule 38 of the CPC and had granted civil imprisonment to defendant No.1. The petitioner was directed to deposit the subsistence allowance for committing defendant No.1 to civil imprisonment. The trial Court, therefore, could not have exercised jurisdiction to stay the said order, much less, by invoking Section 51

of the CPC. He, therefore, prays that the impugned order being without jurisdiction, is rendered void *ab initio*.

4. Having considered the submissions of the learned Advocate for the petitioner, I find from the record that though the petitioner was directed to deposit subsistence allowance vide order dated 19.9.2011, the said amount has been deposited as late as on 21.4.2014, which is practically after 2 years and 7 months. Prior thereto, one of the defendants filed an application on 7.3.2014 and sought the staying of the order dated 19.9.2011.

5. Notwithstanding the laxity on the part of the petitioner / plaintiff as noted above, I find that the trial Court has issued notice to judgment debtor No.3, as to why he should not be committed to prison. Said application Exhibit 54 is said to be still pending.

6. Considering the above and the passage of time, I find that the ends of justice would be met by disposing of this petition and by issuing certain directions to the trial Court.

7. This petition is, therefore, disposed off with the following directions:-

(A) The trial Court shall proceed to decide application

Exhibit 58 in Regular Darkhast No.36 of 2008 as expeditiously as possible and on/or before 15.3.2017.

(B) The trial Court shall also decide Regular Darkhast No.36 of 2008 as expeditiously as possible and on/or before 13.10.2017.

(RAVINDRA V. GHUGE, J.)

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