

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.400 OF 2016

Shashikala Raosaheb Wagh,
age: 64 years, Occ: Household
and Agril., R/o Ghodegaon,
Taluka Newasa, Dist.Ahmednagar.

Petitioner

Versus

01 Bhausahab s/o Murlidhar Dushing,
since deceased, through his L.Rs:

1/A) Anita w/o Murlidhar Dushing,
age: 51 years, Occ: Household,

1/B) Mahesh s/o Bhausahab Dushing,
age: 29 years, Occ: Education,

1/C) Balasahab s/o Bhausahab Dushing,
age: 25 years, Occ: Education.

1/D) Kartiki d/o Bhausahab Dushing,
age: 28 years, Occ: Education.

Nos.1/A to 1/D R/o Ghodegaon,
Mula Irrigation Society,
Ghodegaon, Tq. Newasa,
District Ahmednagar.

1/E) Manisha Yogesh Timkare,
age: 31 years, Occ: Education,
R/o Sonai, Tq. Newasa,
District Ahmednagar.

Respondents

Mr.Zafar M. Pathan, advocate for the petitioner
Mr.R.R.Karpe, advocate for Respondents No.1/A to 1/E.

CORAM : S.B.SHUKRE, J.

DATE : 30th January, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 What is challenged in this petition ultimately is the order dated 23.09.2015 whereby learned Joint Civil Judge, Junior Division, has allowed the application of Respondents – original plaintiffs to deposit cost of Rs.1000/- subject to their depositing additional cost of Rs.500/-, in terms of the order passed below Exhibit-80, vide order dated 09.10.2013.

3 According to the learned Counsel for the petitioner – original defendant, such an order could not have been passed when, by the earlier order dated 06.12.2014, passed below Exhibits-88 as well as Exhibits-101, at Exhibits-108, 110 and 111, vide order dated 23.03.2015, such similar attempts made by the respondents were foiled by the trial Court. He submits that no further time was granted to the respondents for depositing the cost and, therefore, those orders having attained finality, have been indirectly upset by the learned Civil Judge when he granted conditional permission to the Respondents to deposit cost of Rs.1000/-.

4 Although the effect of the order dated 23.09.2015, impugned herein is that, after rejection of the request of extension of time for depositing the cost, some more time has been granted to the respondents, the question is whether by such a contradictory order any prejudice has been caused to the petitioner; and upon consideration of facts and circumstances of this case, in my view,

the answer has to be in negative. The effect of the order dated 23.09.2015 certainly agitates against the orders passed on 06.12.2014 and 23.03.2015 on the applications seeking extension of time or permission of the Court to deposit cost in terms of the order dated 09.10.2013. But, such effect is not confined to only those orders which were passed against the respondents but, it also extends to an order which has been passed against the petitioner on 23.03.2015 when the application at Exhibit-108 was rejected. Thus, it would be seen that the trial Court has not earlier granted any extension of time to deposit the cost. On other hand, the trial Court also refused to grant time on the application filed by the petitioner for dismissal of suit on the ground of non compliance of the order passed below Exhibit-80 resulting in wilful disobedience of the order. In such a scenario, I would find that the question of prejudice to either of the parties becomes immaterial and as stated earlier, the impugned order, if allowed to stay on record, would not cause any prejudice to either of the parties. In such matters, it is better that the controversy between the parties is settled on merits of the case rather than on the basis of conduct of the parties, which has ultimately been viewed with leniency by the trial Court.

5 In this view of the matter, I am not inclined to interfere with the impugned order. Writ Petition deserves to be dismissed and it is accordingly dismissed.

Rule discharged. No costs.

S.B.SHUKRE
JUDGE