

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2455 OF 2016

KAMALBAI GHANSHYAM GARJE
VERSUS
DNYNOBA GANGARAM BODKHE AND OTHERS

...
Advocate for Petitioner : Shri Tandale Tushar M.
Advocate for Respondents : Shri Chapalgaonkar Shailesh S..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th January, 2017

Per Court:

1 All the Respondents are served in this matter. I have heard the learned Advocate for the Petitioner and Shri Chapalgaonkar, learned Advocate on behalf of Respondent Nos.1 to 10.

2 The Petitioner submits that “No W.S. Order” and “proceed ex-parte order” have been passed practically 03 to 04 years prior to the moving of an application Exhibit-79. All the Respondents, who are Defendants, have been negligent and have intentionally disregarded the pending proceedings which compelled the Trial Court to pass the said orders. Even if the application Exhibit-79 was to be allowed and the Respondents were to be given an opportunity of participating in the

proceedings, manifest inconvenience and grave hardships caused to the Petitioner, who is a 53 year old lady, have not been compensated by imposition of costs.

3 Shri Chapalgaonkar has defended the impugned order.

4 Having considered the contentions of the respective sides and having gone through the impugned order, it is apparent that the Petitioner/ original Plaintiff had canvassed before the Trial Court that if the application Exhibit-79 filed by Defendant Nos.1 to 10 was to be allowed, heavy costs be imposed. The Trial Court, after considering the facts of the case, concluded that no loss or harm would be caused to the Petitioner if the Defendants are permitted to participate in the proceedings since the suit would then be adjudicated on its merits. However, in doing so, the Trial Court has failed to consider the hardships suffered by the Petitioner and has not reduced the hardships by imposition of costs.

5 In the light of the above, this Writ Petition is partly allowed only to the extent of directing the original Defendant Nos.1 to 10, present Respondent Nos.1 to 10, to deposit costs of Rs.5000/- (Rupees Five Thousand) (each one of them shall pay Rs.500/-) before the Trial Court within FOUR WEEKS from today. The Petitioner will be at liberty to

withdraw the said amount without conditions. The impugned order to the extent of allowing the application Exhibit-79 and permitting Defendant Nos.1 to 10 to participate in the proceedings and file their Written Statement is sustained.

kps

(RAVINDRA V. GHUGE, J.)