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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.7902 OF 2013

Mrs. Jyoti Vasant Joglekar

..Petitioner.

V/s.

Ashok Trimbak Datar

..Respondent.

Mr.Kiran Nikam for the Petitioner.

Mr.Rajesh Datar for the Respondent.

CORAM : N.M.Jamdar, J.

DATED : 15 February, 2017

ORAL ORDER

By this petition, the Petitioner has challenged the order passed by the learned Civil Judge, J.D., Kalyan dated 18 March, 2013 striking off the defence of the Petitioner, the Defendant in a suit instituted by the Respondent.

2. Though striking off the defence results in serious consequences, the factual position in this petition would demonstrate that the learned Civil Judge was fully justified in taking such a step.

3. Regular Civil Suit No.489/2009 was instituted by the Respondent-landlord on 3 October, 2009 for eviction of the Petitioner from the suit premises. The Petitioner appeared through her Advocate on 29 October, 2009, but did not file written statement. "No written statement" order was passed on 18 February, 2011. On 16 April, 2011, the Respondent filed affidavit of evidence. On 20 April, 2011 since the Petitioner failed to appear and cross-examine the witness on various occasions, 'no cross' order was passed. Thereafter, on 5 August, 2011, application for setting aside No W.S.' order was filed by the Petitioner. The learned Civil Judge extended the indulgence and set aside the 'No W.S. order' by an order on 2 May, 2011 and imposed costs. On 5 August, 2011, the Petitioner filed an application for depositing arrears of rent and on 14 August, 2011, the Petitioner was permitted to deposit the rent, yet they were not deposited in time. On 4 October, 2012, application for striking of defence was filed. Even to this application, no reply was filed and 'No Say' order was passed. Thereafter, on 6 February, 2013 the Petitioner filed an application to set aside the 'No Say' order. Again the learned Civil Judge has shown indulgence and allowed the application and permitted the Petitioner to file reply. One more application was filed for extension of time to deposit the amount. The learned Civil Judge rejected the application and thereafter, proceeded to pass the impugned order.

4. The learned counsel for the Petitioner contended that

the Petitioner was not properly advised by her Advocate and prayed that the Court should permit the Petitioner to deposit the rent. The learned counsel for the Respondent strenuously opposed and submitted that these are merely delaying tactics to deprive the landlord.

5. As far as advice of the Advocate is concerned, the Petitioner has made various applications wherein costs have been imposed and that thus it cannot be expected that the Petitioner was unaware of the gravity of not proceeding urgently. Atleast, when 'No W.S.' order was set aside, the Petitioner could have shown some diligence in prosecuting the suit. Having taken note of all these factors, if the learned Civil Judge ultimately decided not to extend any further indulgence to the Petitioner, I do not find any error in the approach of the learned Civil Judge. There cannot be a limitless indulgence in favour of one party which results in injustice to the other side. In fact, the learned Civil Judge has already shown enough latitude. If a casual approach is adopted, it would send a wrong signal encouraging the litigants to adopt various delaying tactics, especially in matters arising under the Rent Act. In the circumstances, no case is made out for interference under Article 227 of the Constitution of India. The writ petition is accordingly rejected.

(N.M.Jamdar, J.)