

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10971 OF 2013

Jayvant A. Nalawade	..	Petitioner.
v/s.		
M/s. Mahavir Trades	..	Respondent.

Mr. Shashank Mangle, for the Petitioner.
Mr. Pandit Kasar I/b. Mr. Rohit Mangle, for the Respondent.

CORAM: M.S.SANKLECHA, J.
DATE : 25th SEPTEMBER, 2017.

P.C:-

This Petition under Article 227 of the Constitution of India, challenges the order dated 5th July, 2013 passed by the Joint Civil Judge, Senior Division, Kolhapur. By the impugned order, the Petitioner's application for extending the time for payment of costs of Rs.250/- which was condition precedent in the order dated 11th February, 2011 for setting aside the no written statement order, was rejected.

2 On 27th November, 2013, notice was issued to Respondent for admission. At that time, the proceedings before the Trial Court was stayed and the Petitioner was directed to deposit a sum of Rs.2,000/- in Court before the returnable date i.e. 18th December, 2013. Besides, parties were put to notice that the Petition may be disposed of finally at the stage of admission.

3 Accordingly, Petitioner has deposited the aforesaid amount of Rs.2,000/- in this Court before 18th December, 2013.

4 The Trial Court had passed a 'No Written Statement' order and placed the matter ex-parte. The Petitioner, thereafter moved an application on 13th January, 2010 for setting aside the 'No Written Statement' order and taking the same on record. By an order dated 11th February, 2013, the 'No Written Statement' order was set aside by the Trial Court and the Written Statement was taken on record on payment of costs of Rs.250/-. However, Petitioner had failed to pay the costs of Rs.250/- as he was in jail when the order dated 11th February, 2013 was passed.

5 In fact, the Petitioner was in jail during the period 24th June, 2010 to 30th June, 2012. Thereafter, on 29th April, 2013, Petitioner made an application for extension of time to deposit the costs of Rs.250/- which was directed by the order dated 11th February, 2012 as condition precedent for taking Petitioner's written statement on record. Respondent opposed the same, however it consented the application being taken on record on the payment of costs of Rs.2000/- being imposed upon the Petitioner.

6 The Trial Court, by the impugned order, rejected the Petitioner's application, inter alia, on the ground that the Petitioner is a businessman and the amount of Rs.250/- is negligible. Therefore, the Trial Court holds that the Petitioner could have paid the amount as directed by the order dated 11th February, 2011.

7 Mr. Kasar, learned Counsel appearing for the Respondent

opposes the allowing of the Petition. He states that the suit is of year 2009 and the order dated 2011 was not complied with by the Petitioner. The application for extension of time to deposit costs was made only in 2013. All this would go to show that Petitioner is merely seeking to delay the proceedings and not interested in defending the suit on merits.

8 The impugned order dated 5th July, 2013 ought to have considered the fact that the Petitioner was in jail when the order dated 11th February, 2013 was passed taking his written statement on record, on payment of costs of Rs.250/-. Petitioner came out of jail only on 1st July, 2012. Sufficient reason has been set out by the Petitioner for not being able to comply with the order dated 11th February, 2013 and, therefore, the written statement should have been taken on record on enhancement of costs, as sought by the Respondent at Rs.2000/- before the Trial Court. The Petitioner had after filing this Petition, prayed for and obtained an interim stay with regard to the trial being proceeded with before the Trial Court from this Court on 24th November, 2013. The suit is of the year 2009. The delay on the part of the Petitioner in filing written statement and also in not moving this Court for an early disposal of this Petition are all indication of deliberate delay. In fact, the Petitioner sitting tight over the benefit of ad-interim order in his favour, would indicate that the Petitioner is not serious about contesting the suit on merits. Otherwise, he would have moved the Court for early hearing.

9 Therefore, considering the above facts, the impugned order dated 5th July, 2013 is set aside. Time to file the written statement is extended for a period of two weeks from today. The Trial Court is directed to take written statement which was filed along with application

for extension of time – below Exh. 21, on record. However, same is allowed only on payment of costs of Rs.5,000/- as condition precedent. An amount of Rs.2,000/- has already been deposited in this Court. Petitioner to pay the further amount of Rs.3,000/- to the Respondent within two weeks from today. Respondent is at liberty to apply to the Registry who would grant refund of Rs.2,000/- along with interest, if any, to it. On the Petitioner submitting evidence of the payment of Rs.3,000/- before the Trial Court, the written statement would be taken on record for further proceeding with the matter.

10 Mr. Mangle, learned Counsel appearing for the Petitioner states that he would join the Respondent in making application to the Trial Court for expeditions disposal of the suit which is of the year 2009. The Trial Court will consider the same appropriately.

Petition disposed of in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)