

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

954 CIVIL APPLICATION NO. 5081 OF 2017
IN WP/12323/2016

Dagdu Alias Anna Keru Shinde ... Applicant

Versus

Pandurang Ganpat Shinde & Ors. ... Respondents

...

Mr. K.B. Borde, Advocate for the Applicant

Mr D.R. Adhav, Advocate for Respondent Nos. 1, 6 & 7

...

Coram : N.M. Jamdar, J.

Date : 30 November 2018

Oral Order:

1 This civil application and writ petition are taken together at the request of learned Counsel for the parties.

2 By this Civil Application, the applicant has sought restoration of the writ petition, which was dismissed for non-prosecution and by the writ petition, the petitioner has challenged the order passed by the learned Civil Judge, Junior Division, Shrirampur dated 2 July 2016

rejecting the application filed by the petitioner to set aside the 'No WS' order.

3 The respondents/plaintiffs have filed a suit bearing RCS No.211 of 2014 pending in the Court of Civil Judge, Junior Division, Shrirampur. The petitioner had appeared in the said suit suo moto and in January 2015 and immediately 'No WS' order was passed. Thereafter, the application was filed for setting aside, the 'No WS' order, which was rejected by the impugned order.

4 At the time of issuance of notice of the writ petition, this Court had directed the petitioner to deposit an amount of ₹ 10,000/- in the trial court and further proceedings in the suit were stayed. The petitioner did not deposit the amount and the writ petition was dismissed for non-prosecution. Thereafter, the amount was deposited.

5 I have heard the learned Counsel for the parties. The petitioner had suo-moto appeared in the suit. There is a delay in the writ petition and also in the civil application. The learned Counsel for the respondents submitted that indulgence can be extended subject to deposit of cost of ₹ 25000/- to the respondents/plaintiffs.

6 In these circumstances, the Civil Application is allowed and writ petition is restored to file. The impugned order dated 2 July 2016 is set aside. The petitioner is given leave to file written statement within a period of four weeks, subject to the petitioner depositing an amount of ₹ 25000/- in the trial Court within a period of three weeks. If the cost of ₹ 25000/- is not deposited within a period of three weeks, the liberty to file written statement granted by this Court will stand revoked. After the cost is so deposited, the respondents/plaintiffs are permitted to withdraw the same.

7 The Civil Application and Writ Petition are disposed of as above.

N.M. Jamdar, J.

....

Sameer/-