

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1101 OF 2018
(Sominath Fakira Pawar Vs. Laxmibai Asaram Rajput and others)

Mr.Mobin H.Shaikh, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/01/2018

PER COURT :

1. The petitioner / original defendant No.2. is aggrieved by the order dated 13/11/2017 by which the Trial Court has rejected application Exh.55 filed in RCS No.364/2009 and has refused to set aside the "No W.S." and "No Cross" order.

2. Learned Advocate for the petitioner has strenuously criticized the impugned order and relies upon the judgment of this Court in the matter of Dilip Kesarimal Mehta and another Vs. Kashibai Chahaya Patil and others [2014 SCC Bombay 2343] to support his contention that if a proper explanation is put forth, this Court can enlarge the period mentioned in Order 8 Rule 1 of the CPC and permit the defendant to file a written statement.

3. I have considered the strenuous submissions of the learned

Advocate and have gone through the 8 grounds formulated by him.

4. The petitioner had appeared in the suit on 29/12/2009 engaging Advocate Mr.S.D.Padar. Since written statement was not filed for 6 months, 'No W.S.' order was passed on 29/03/2010. Thereafter, "No Cross" order was passed after 6½ years on 28/09/2016. Exhibit 55 praying for recalling "No W.S." and "No Cross" order was filed on 04/10/2017 and which has been rejected by the impugned order.

5. Grievance put forth by the petitioner is that he should not suffer for the mistake committed by the Advocate who was negligent for 7 years. He had informed the petitioner orally that the written statement has been filed. The petitioner trusted his statement. As such, since the petitioner is a poor agriculturist and can not pay heavy costs to the plaintiffs, the impugned orders deserve to be set aside and the delay of 7 years and 8 months be condoned.

6. It is informed that the petitioner has not proceeded against his Advocate, who purportedly has placed the petitioner in this situation. It is frequently canvassed before every Court that the Advocate is to be blamed, Advocates are lethargic and they are careless and the

litigant should not suffer on account of the conduct of the Advocate. It is easy to make allegations against an Advocate on his back. Such an Advocate is practically rendered defenceless.

7. No steps have been taken by this petitioner against his Advocate, if at all the Advocate is careless and negligent. A spacious plea is taken that the Advocate orally stated, before the "No W.S." order was passed, that the written statement is filed. Learned Advocate for the petitioner submits that he neither questioned his Advocate as to how a written statement could be filed without his signature and verification, in as much as, he did not seek a copy of the written statement which was purportedly filed. If a litigant is lethargic and negligent, he cannot be granted relief on the basis of baseless allegations against his Advocate.

8. Besides making an allegation as recorded above, the petitioner has nowhere stated in Exh.55 as to how many times did he attend the Court proceedings and whether he was following the matter. If that be so, the 'No Cross' order would not have been passed, if the petitioner was present in the Court and watching the proceedings.

9. Considering the above, I do not find that the view taken by this

Court in Dilip Mehta (supra) where the delay of about 4 years was condoned by imposing costs of Rs.20,000/-, would assist the petitioner.

10. This petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)