

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 7274 OF 2017

Mr. Sunil Jaysingh Patil	.. Petitioner
Vs.	
Mr. Vikram Harikrishna Singh	.. Respondent

...

Ms. Pooja P. Joshi for the Petitioner.
Mr. Sandeep R. Waghmare for Respondent.

***CORAM : V.L.ACHLIYA, J.
DATE : 15th FEBRUARY, 2018.***

P.C. :

1. Rule. Rule returnable forthwith. By consent heard finally.

2. In view of the limited challenged raised in the petition, it is not necessary to discuss the facts in detail. By this petition, the petitioner / defendant No.1 has challenged the order dated 25.01.2017 passed in Regular Civil Suit No. 725/2008 by the Civil Judge, Junior Division (P.M.C. Court), Pune. By the impugned order, the learned judge of the trial court has rejected the application (Exh.113) seeking permission to deposit the cost amount of Rs.1,000/- in compliance of order dated 10.06.2015 on extending the time to deposit cost and to take the additional written statement on record.

3. By order dated 10.06.2015 passed in the matter, the

learned judge of the Trial Court has set aside the no additional written statement order dated 05.03.2013 passed below Exh.1. The order of no additional written statement was set aside subject to payment cost of Rs.1000/- to be payable by defendant to plaintiff. Due to serious illness of the father of the petitioner, the petitioner could not attend the court and complied with the order to deposit the cost amount which leads to passing of no written statement order dated 10.03.2016. Hence, petitioner filed application vide Exh.113 seeking permission to deposit the cost amount and to set aside the order dated 10.03.2016. The application came to be rejected by order dated 25.01.2017, which is challenged by way of this petition.

4. Learned counsel for the petitioner submits that on failure to deposit the cost was not deliberate but due to circumstances beyond the control of the petitioner. It is contended that the father of the petitioner suffered brain-stroke. He was required to be hospitalized. He was required to undergo major surgery. Due to this reason, the petitioner could not attend the Court so as to comply the condition to deposit the cost. In this back ground, the learned counsel submits that the order passed by the trial court deserves to be set aside.

5. Learned counsel for the respondent supported the order passed by the trial court.

6. On due consideration of submission advanced, I am of the view that order passed by the trial court is not sustainable in law. The application is rejected for the reason that the petitioner has not filed documents supporting the application as to illness and hospitalisation of the father of the petitioner. In my view, trial court has adopted too technical approach in dealing with the application. It is quite settled position in law that while dealing with the procedural aspects, the courts of law should not adopt hyper technical approach. In dispensation of justice while dealing with procedural matters must adopt pragmatic approach and make endeavour to decide the case on merit. I am therefore inclined to allow the petition. Accordingly, the petition is allowed in terms of prayer clause (ii) and (iii) subject to deposit of cost of Rs.1,000/- within two weeks from the date of passing of this order. The trial court is directed to expediate the hearing of the case and decide the case as expeditiously as possible and preferably within the period of one year from the date of passing of this order.

7. Rule made absolute in above terms.

(V. L. ACHLIYA, J.)