

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 16436 OF 2018

Meenakshi Pawan Verma	..	Appellant
VS.		
Kamlesh K. Panchal & Anr.	..	Respondents

Mr. J. G. Damani and Mr. D. J. Damani for Appellant.
Mr. Sajid Shamin and Murtuza Slatewala i/b. Shamim & Co. for
Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 14 AUGUST 2018

P.C :

- 1] Heard learned counsel for the parties.
- 2] Admit. With the consent of and at the request of the learned counsel for the parties, the appeal is taken up for final disposal at this stage itself.
- 3] The challenge in this appeal is to the order dated 24th November 2017, by which the learned trial Judge has dismissed notice of motion no. 900 of 2017 seeking for extension of time to deposit costs of Rs.7,000/-.
- 4] The appellant had not responded to the summons for judgment within the prescribed period. Therefore, the appellant took

out notice of motion no. 2080 of 2014 seeking for condonation of delay. This notice of motion was allowed by the learned trial Judge by order dated 11th November 2016 and the delay was condoned subject to payment of costs of Rs.7,000/- within 15 days. The appellant then took out an application at Exhibit 13A seeking for extension of payment of costs. This was rejected by order dated 17th February 2017. Thereafter the appellant took out notice of motion no. 900 of 2017, again, in effect, seeking for enlargement of time to comply with order dated 11th November 2016. It is this notice of motion which came to be rejected by the impugned order. In the memo of appeal, the reason cited are that two Advocates had been engaged to appear in this matter but it is on account of communication gaps with these Advocates that the amount of costs remained to be paid. He further stated that the husband of the appellant works abroad and therefore there was some difficulty in arranging the finances.

5] Although, the reasons stated are not very convincing, it does appear that the effect of the impugned order is disproportionately harsh upon the appellant. The appellant has tried to blame her Advocates and on that basis applied for some indulgence from this Court. No doubt, the parties should not suffer for the mistakes of their Advocates. However, this does not and cannot be interpreted

to mean that the opposite party should suffer for the mistakes of the appellant's Advocates. Greater level of vigilance was expected from the appellant particularly after securing several favourable orders in the matter of filing of defence.

6] Nevertheless, considering the consequences of not filing any defence, some level of indulgence can be shown to the appellant subject of course to compensating the respondents by way of costs. For no reason, the proceedings in the summary suit which are otherwise supposed to be disposed of expeditiously have been unduly delayed for reasons attributable to the appellant or her Advocates.

7] The learned counsel for the appellant, on basis of instructions from the appellant, Mrs. Meenakshi Verma, who is present in the Court states that the appellant will pay costs of Rs.25,000/- to the respondent no. 1 within a period of one week from today. This statement is accepted.

8] Subject to the payment of costs of Rs.25,000/- within one week from today, without any further default, the impugned orders are set aside and leave is granted to the appellant to pay costs of Rs.7,000/- and thereafter avail out the benefit of order dated 11th November 2016 for filing of a response.

9] The amount of costs of Rs.25,000/- as well as Rs.7,000/- awarded vide order dated 11th November 2016 to be paid to the respondent no. 1 within a period of one week from today. The appellant is at liberty to even deposit these costs before the trial court within a period of one week. If such costs are deposited, the respondent no. 1 is permitted to withdraw the same unconditionally.

10] In case an amount of Rs.32,000/- as aforesaid is not deposited or paid within a period of one week from today, this appeal shall be deemed to have been dismissed with costs of Rs.25,000/-. This shall be without any further reference to this Court.

11] Further, the hearing in the suit is also expedited. The learned trial Judge to dispose of the suit within a period of one year from today.

12] The appeal is allowed in the aforesaid terms.

(M. S. SONAK, J.)