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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8049 OF 2014**

Grampanchayat Kumbhale, through
Sarpanch

.....Petitioner

V/s.

Shridhar Atmarao Khaire and another

.....Respondents

Mr. K. K. Jadhav for the petitioner

CORAM : K. K. TATED, J.

DATE : 6th DECEMBER, 2018.

P.C.

Heard the learned counsel for the petitioner.

2 Though the respondents are duly served, no one appeared on behalf of them when the matter is called out.

3 This Court by order dated 09/09/2014 issued notice to other

side stating that if time permits matter to be heard and disposed of finally at the stage of admission.

4 By this writ petition, petitioner-Grampanchayat Kumbale is challenging the order dated 01/08/2014 passed by Jt. Civil Judge, Dapoli below Exhibit 44 in R.C.S No. 3 of 2013 refusing to grant time to pay cost of Rs. 200/- as per order dated 27/06/2014 below Exhibit 39.

5 The learned counsel for the petitioner submits that in the present proceedings initially, Trial Court passed order of 'No-cross examination' against the petitioner. Thereafter, the petitioner preferred the application for setting aside the said order. He submits that the said order was set aside by the Trial Court by passing order dated 27/06/2014 below Exhibit 39 on payment of cost of Rs. 200/-. He submits that it remained on their part to pay the said cost and there was a delay. Hence, they preferred the application below Exhibit 44 for extension of time to pay the cost. He submits that the Trial Court has rejected their application for extension of time.

Hence, they preferred the present petition.

6 The learned counsel for the petitioner submits that in the present proceedings, respondent/original plaintiff filed R.C.S. No. 3 of 2013 for an order of injunction restraining the petitioner from taking any action in respect of unauthorized construction. He submits that if the writ petition is not allowed, irreparable loss would be caused to the petitioner. He submits that it is the duty of the Grampanchayat to see that no one to carry out any unauthorized construction in their area. He submits that the petitioners are ready and willing to deposit the said cost within 4 weeks from today in the Trial Court.

7 Considering the submissions made by the learned counsel for the petitioner and though the respondents are duly served, no one appeared on behalf of them when the matter is called out, I am of the opinion that the time to comply the order dated 27/06/2014 passed by the Trial Court below Exhibit 39 is required to be granted. It is to be noted that if present petition is not allowed, it is difficult

for the petitioner to defend the Suit filed by the respondent/plaintiff to protect unauthorized construction.

8 Considering these facts, I am of the opinion that the petitioner has made out case for allowing the writ petition but at the same time they have to pay additional cost of Rs. 2500/-. Hence, following order:

(A) Writ petition is allowed in terms of prayer clause (a) which reads thus:

“(a) That this Hon'ble Court be pleased to issue rule and after going into the legality and propriety thereof be further pleased to quash and/or set aside the impugned order dated 1st August 2014 passed on Exhibit '44' in Regular Civil Suit No. 3 of 2013 by the Hon'ble Civil Judge, Dapoli, District Ratnagiri and allow the said Application Exhibit 44.”

(B) Petitioner to deposit the cost of Rs. 200/- alongwith

additional cost of Rs. 2500/- in the Trial Court on or before 31/01/2019, failing which the writ petition shall stand dismissed without referring back to the Court.

(C) If cost paid in time, Trial Court is directed to allow the plaintiff to withdraw sum of Rs. 200/- cost and Rs. 2500/- be transferred in the account of Legal Aid Service of that Court or any other account whether Court can use said amount for public purpose.

(D) If cost is deposited in time, the Trial Court is directed to decide R.C.S. No. 3 of 2013 on its own merits allowing the petitioner to cross-examine the plaintiff.

(E) Writ petition stands disposed of.

[K. K. TATED, J.]