

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10796 OF 2019

SHRI GOVIND NILKANTH JOSHI
VERSUS
SHRI MUKUND RAMESHWAR BHUTADA AND OTHERS

Mr.N.C.Garud, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 30/08/2019

PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order dated 04/10/2018 passed by the Trial Court by which application Exh.18 filed by defendant Nos. 1 and 2 seeking setting aside of "No W.S." order dated 02/07/2018 in RCS No.155/2017, has been allowed with costs of Rs.500/-.

2. The learned Advocate for the petitioner Mr.Garud has vehemently argued that earlier also the Trial Court had refused to vacate the "No W.S." order by it's earlier orders dated 09/03/2018 and 24/04/2018. Reasons for rejecting the application Exh.16 on 02/07/2018 are identical to the order passed by the Trial Court below Exh.18. He, therefore, submits that " *How can the Trial Court*

pass such an order ?".

3. I have perused the petition paper book and the grounds formulated by the petitioner. With his assistance, I have perused the copy of the Roznama placed on record.

4. I find that Mr.Garud has made an attempt to mislead the Court. His submissions are fallacious. He is trying to convey to the Court that the adjournment application Exh.16 was an application for setting aside the "No W.S." order. He has also tried to convey that the application Exh.15 dated 24/04/2018 was also a similar application. Exhs. 15 and 16 were purely applications for adjournment. On 02/07/2018, the Trial Court passed an order of "No W.S." against defendant Nos. 1 and 2. Exh.18 was filed on 08/08/2018 and by the impugned order, the Trial Court has concluded that the written statement can be taken on record, by imposition of costs.

5. The Law on condonation of delay is settled in Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], especially in paragraph No.3, which reads as under :-

"1. Ordinarily a litigant does not stand to benefit by lodging an

appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

6. In such matters, the Court has to consider as to whether the doors of litigation would be closed and a party would be rendered defenceless if such "No W.S." order is not recalled. A pragmatic approach has to be taken rather than taking a pedantic view.

7. I find that the Trial Court has considered that the delay is neither deliberate nor inordinate. It has taken a pragmatic view in the matter.

8. This petition, being without merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)