

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6775 OF 2018***

Mandke & Mandke Infrastructure
Pvt. Ltd.

... Petitioner

Vs

Shri Sanjay Shridhar Vaze

... Respondent

...

Mr. Vishal Muglikar I/by Mr. Mayur D. Joglekar for the
Petitioner.

Mr. Tejas P. Hartalkar for the Respondent.

CORAM : SANDEEP K. SHINDE J.

RESERVED ON : JULY 11, 2019

PRONOUNCED ON: JULY 18, 2019

P.C. :

Petitioner-Company is the defendant in Special Civil Suit No.639 of 2016 instituted by the respondent. The learned trial Court declined to set aside “No WS order dated 24th January, 2017” vide an order dated 3rd January, 2018. It is against this order, the petitioner has preferred this Writ Petition under Article 227 of the Constitution of India.

2 The Petition was heard by this Court on 30th April, 2019 and following order has been passed:

“5] Mr. Muglikar, on the basis of instructions, states that the petitioner will have no objection whatsoever to the respondent withdrawing the amount of Rs.1 Lakh from out of deposited amount of Rs.5 Lakhs, if ultimately, leave is granted to the petitioner to file a written statement in the suit. This statement is accepted.

3 The reasons set forth by the petitioner for setting aside 'No WS order' were not accepted by the learned Judge having found the petitioner negligent. Impugned order says that request of the petitioner was opposed and resisted by the respondent, however, it appears that the respondent urged before the trial Court to allow the application subject to cost of Rs.1 Lakh.

4 All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. It is held by the Hon'ble Supreme Court in the case of **Sambhaji and Others v. Gangabai and Others (2008) 17 Supreme Court Cases 117** that '*a procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice.*'

5 Thus, taking into consideration facts of the case and the submissions of the respondent before the learned trial Court, in interest of justice, the “No WS order dated 24th January, 2017” is set aside subject to cost of Rs.75,000/-, which the petitioner shall deposit in the trial Court within three weeks from the date of uploading this order. On such deposit of cost, the trial Court shall permit respondent/plaintiff to withdraw the same unconditionally. It is further clarified that the deposit of cost is a condition precedent, meaning thereby if the cost is not deposited within the aforesaid period, the petition shall stand dismissed without further reference to this Court.

(SANDEEP K. SHINDE, J.)