

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6418 OF 2018

Anil Arjandas Motwani

...Petitioner

vs.

Laxmi Lal Aswani and Others

...Respondents

Ms. Kshama Bhandari I/b. Mr. Vishal Ghosalkar, for the Petitioner
Mr. Dilip Lal Aswani, the Respondent No. 1/2 in person.

CORAM : M. S. SONAK, J.

DATE : APRIL 05, 2019

JUDGMENT

. Heard Mr. Bhandari, learned counsel for the Petitioner and
Mr. Dilip Aswani, the Respondent No.1/2 in person.

2. On 20th March, 2019 this Court made the following order:

“1] Heard Ms Kshama Bhandari for the petitioner. Issue fresh notice to the respondents returnable on 5th April 2019. The notice to indicate that the matter may be disposed of finally at the stage of admission.

2] In addition to the notice to be issued by the registry, the petitioner is permitted to effect private service upon the respondents and file affidavit of service.

3] Mr. Dilip Lal Aswani, respondent No.1/2 is present in person and requests for adjournment. Now that the matter is being posted on 5th April 2019, his request stands granted. In case, any of the respondents desire to file reply they may do so by furnishing advance copy to the learned counsel appearing for the petitioner latest by 2nd April 2019.

4] Further proceedings before the Trial Court in Regular Civil Suit No. 395 of 2008 are stayed until the returnable date.

5] Place the matter on supplementary board on 5th April 2019.

6] All concerned to act on the basis of an authenticated copy of this order.”

3. The challenge in this Petition is to the order dated 19th March, 2018 by which the learned trial Judge has taken of the written statement filed by the Petitioner on the ground that the Petitioner failed to pay the costs of Rs. 200/- to District Legal Services Authority (DLSA) which was the pre-condition for taking the written statement on record. The Petitioner alleged that such cost was actually paid but the receipt of the same has been lost in the Court. The learned trial Judge upon examining the record has disbelieved the case of the Petitioner.

4. Mr. Dilip Lal Aswani has also filed a detailed affidavit in reply on which he demonstrated that the costs to be paid. The receipt would have certainly been available on record. He also placed on record the reply received from DLSA pursuant to his query under R.T.I. that no costs ever been received by DLSA.

5. *Prima facie* it does appear that the Petitioner was not extremely candid to the Court. Despite all these, the direction for taking of his written statement from the record, appears to be too harsh. For the lapse on the part of the Petitioner, some costs should have been imposed upon the Petitioner. However, the drastic order taking his written statement of the record was really not warranted.

6. For the aforesaid reasons, the impugned order, in so far as it concerned the Petitioner is set aside.

7. The written statement of the Petitioner is directed to be taken back on the record. However, this relief is strictly subject to the Petitioner's now paying within two weeks costs of Rs. 2,000/- in favour of the DLSA and submitting necessary receipt for the confirmation of such payment.

8. Further in addition to the aforesaid costs, the Petitioner will also have to pay costs of Rs. 8,000/- in favour of Respondent Mr. Dilip Lal Aswani within two weeks from today.

9. In case there is any difficulty in payment of costs to Mr. Dilip Lal Aswani then the said amount will have to be deposited before the trial Court within two weeks and then Mr. Dilip Lal Aswani will be at liberty to withdraw the said amount unconditionally.

10. It is made clear that if such costs of Rs. 10,000/- are not paid or deposited within two weeks, then this Petition shall be deemed to have been dismissed with cost of Rs. 5,000/-. Out of which Rs. 2,000/- to be paid to DLSA and Rs. 3,000/- to Mr. Dilip Lal Aswani.

11. Rule is made absolute in the aforesaid terms.

12. The parties to appear before the trial Court on 16th April, 2019 at 11.00 am and file authenticated copy of this order.

(M. S. SONAK, J.)