

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7167 OF 2019

Mr. Vinayak Pandharinath BhongalePetitioner

V/s.

Sou. Baby alias Pushpa Baban

Darshale and 5 Ors.

....Respondents

Mr. Tejas Kapte, Advocate for the petitioner.

None for the respondents.

CORAM : SANDEEP K. SHINDE, J.

5th July, 2019.

P.C. :

1. Heard learned Counsel for the petitioner.
2. Petitioner is the defendant no.1 in Special Civil Suit No. 947 of 2018 instituted by respondent no.1 herein. Vide order dated 5th March, 2019, the petitioner was allowed to file Written Statement subject to cost quantified at Rs.500/-

and accordingly the delay occurred in filing the Written Statement was condoned. That till 5th April, 2019 the cost was not paid and therefore the trial Court refused to accept the Written Statement and resultantly “No W.S.” order was passed. On 22nd April, 2019, the defendant was afforded one more opportunity to deposit the cost on/or before 3rd June, 2019. Even on that date, the cost was not paid but an application below Exhibit-45 was filed. Thus, on consideration of the non-compliance of the order of payment of cost, the learned Judge vide order dated 3rd June, 2019, refused to accept the Written Statement and condone the delay. This order is challenged in the petition filed under Article 227 of the Constitution of India.

3. The Counsel for the petitioner submits that, inadvertently the order remained to be complied with and therefore in the interest of justice, the petitioner-defendant no.1 may be permitted to file Written Statement on such terms and conditions as this Court may deem fit and proper.

Taking into consideration the facts of the case and in the interest of justice, the petitioner-defendant no.1 is permitted to file the Written Statement subject to cost quantified at Rs.20,000/- (Rs. Twenty Thousand only) which the defendant no.1 shall deposit in the trial Court within a week from today.

If such cost is deposited within a week, the learned trial Judge shall accept the Written Statement of the petitioner and allow the plaintiff to withdraw the same unconditionally.

If the cost is not deposited within a week, the petition shall stand dismissed automatically without further reference to this Court.

4. Subject to deposit of cost, order dated 3rd June, 2019 is quashed and set aside. The petition is disposed of in above terms.

5. All to act on authenticated copy of this order.

(SANDEEP K. SHINDE, J)