

Wakodikar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.58 OF 2016

Motilal M.Kawar and others. Petitioners.

V/s.

Smt.Pankuvar S.Chhajed and others. Respondents.

Mr.Bharat Vaishnawa I/b. Ms.Bharat Vaishnawa and Co., Advocate for
the Petitioners.

None for the respondents.

CORAM : M. S. SONAK, J.

DATED : 30th APRIL, 2019.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith considering the issue involved in the present matter.

2. The petitioner was permitted to amend the plaint subject to payment of costs of Rs.5,000/-. Such costs were not paid within prescribed period and therefore, extension was applied for. This application for extension was declined by order dated 20/10/2015. Hence the present petition.

3. The Learned counsel for the petitioners relies upon this Court's order dated 01/04/2019, which reads as follows;

- 1. Not on board. Upon mentioned take on board.*
- 2. Learned counsel for the applicants submits that the delay in payment of costs by one day is condoned. The period is extended by one week from today.*
- 3. The matter to appear on board on April, 30, 2019.*

4. He submits that in terms of the aforesaid order, this petition stands allowed. The submission is entirely misconceived. The aforesaid order was made at the stage of mentioning, because this Court was under the impression that it is this Court which has imposed some costs upon the petitioners and there was one day delay in depositing of the same. At the time when this Court made the order dated 01/04/2019, this Court was not aware that the impugned order, by which, delay in deposit of costs was not condoned was yet to be set aside. Accordingly, the order dated 01/04/2019 is hereby recalled.

5. Nevertheless, the fact remains that there was only one day delay in deposit of the costs. Therefore, however, the petitioners, have not taken emergent steps to effect service upon the respondents. On several dates, this matter had to be adjourned because the petitioners failed to take steps to serve the respondents. However, now the Learned Counsel for the petitioners states that service has been effected upon all the respondents.

6. Therefore, considering the issue involved, the petition is taken up for final disposal. It is very much likely that the respondents are not interested in contesting this matter. However, the matter has been delayed un-necessarily on account of failure of the petitioners to

take steps in the matter.

7. The petitioners, is now directed to pay further costs of Rs.5,000/- in favour of the Legal Services Authority within a period of four weeks from today. The costs of Rs.5,000/-, which the petitioners have now already deposited before the Trial Court, are directed to be paid to the respondents i.e. the defendants in the suit. The delay in the matter of depositing of such costs is now condoned, after setting aside the impugned order dated 20.10.2015.

8. The petitioners to file affidavit of compliance before the Trial Court with regard to payment of costs of Rs.5,000/- in favour of the Legal Services Authority of this Court on or before next date before Trial Court i.e. on 03.05.2019.

9. The impugned order is set aside subject to the aforesaid. The petitioners, to carry out necessary amendment within a period of six weeks from today, no doubt, subject to the payment of costs of Rs.5,000/- to Legal Services Authority.

10. The rule is made absolute in the aforesaid terms.

11. All concerned, to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)