

SIN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4566 OF 2016

Shri. Harish Santhanam Muthukrishan

vs.

Shri. Dines S/o Bhagchand Kochar

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. Aktar Nabi Ansari, counsel for petitioner.
Shri. S. T. Madnani, counsel for respondent.

CORAM : MANISH PITALE J

DATED : 15/11/2019

By this writ petition, the petitioner (original defendant) has challenged order dated 17/02/2016 passed by the Court of 5th Joint Civil Judge Senior Division, Nagpur (Trial Court) whereby an application filed by the petitioner for setting aside “No W. S.” order dated 02/05/2012 and for grant of permission to file written statement, has been rejected.

2. The respondent plaintiff filed a suit claiming an amount of Rs.26,95,500/- [Rs. Twenty Six Lakh Ninety Five Thousand Five Hundred only] from the petitioner on the basis that petitioner had agreed to purchase the suit land from the respondent and that after payment of initial amount, the balance amount was not paid by the petitioner. The suit was filed in June 2011 claiming the aforesaid amount along

with interest @ 18%p.a. from the date of filing of the suit till recovery of the full amount.

3. There is no dispute about the fact that the petitioner failed to file written statement and that on 02/05/2012, the Trial Court proceeded to pass the order of “No W.S.” against the petitioner. Thereafter, the aforesaid application for setting aside the said order and for grant of permission to file written statement was filed on behalf of the petitioner on 21/09/2015. Written Statement was also placed on record of the Trial Court along with said application. But, by the impugned order, the Trial Court found that the application itself was filed after lapse of about **03 years and 04 months** and the submissions made in the application were not found to be proper and sufficient and on this ground, the said application was rejected. As a result, the suit filed by the respondent is likely to proceed without written statement on behalf of the petitioner.

4. The learned counsel appearing for the petitioner submitted that in the present case it was the specific contention of the petitioner that after the parties entered into agreement to purchase the said land, it was found by the petitioner that some other person was in possession of the said land claiming title to the same on the basis of a registered sale deed. As a result, the petitioner had approached the respondent stating that if title in the land was made clear, the balance amount of consideration would be paid by the petitioner. It was claimed that the respondent

kept on assuring the petitioner that the said cloud over the title in the said land would be sorted out that therefore, under this impression, the petitioner did not file written statement and he was under the impression that the dispute would be settled. In this context, the learned counsel for the petitioner invited attention of this Court to a pursis dated 07/09/2015 filed on behalf of the petitioner stating that he wanted the matter amicably settled and that it could be referred for mediation before a Judicial Mediator. According to the learned counsel for the petitioner, when the possibility of the dispute being settled by mediation was found to be ruled out by the conduct of the respondent, the aforesaid application along with written statement were filed by the petitioner before the Trial Court. In this backdrop, it was submitted that the impugned order was required to be set aside, particularly, in the light of the fact that the petitioner had deposited an amount of Rs.14,00,000/- [Rs. Fourteen Lakh only] before the Trial Court in terms of order dated 11/08/2016 passed by this Court to show bonafide of the petitioner.

5. On the other hand, the learned counsel for the respondent submitted that all the contentions raised on behalf of the petitioner were available for him to be placed before the Trial Court in the written statement itself, which could have been very well filed within the stipulated period of time. It was submitted that there was no material placed on record to show that there were any talks held between the parties or that the respondent gave assurance as claimed by

the petitioner.

6. It was submitted that there was inordinate delay in moving the application for setting aside “No W. S.” order and permission to file written statement, which was correctly taken into consideration by the Trial Court while passing impugned order. On this basis, it was submitted by the respondent that the writ petition deserved to be dismissed.

7. In order to examine the contentions raised on behalf of the rival parties, it would be relevant to refer to the prayers made in the suit filed on behalf of the respondent. First prayer is for a decree directing the petitioner to pay amount of Rs.26,95,500/- [Rs. Twenty Six Lakh Ninety Five Thousand Five Hundred only] to the respondent and the second prayer is regarding future interest to be paid by the petitioner @18% p.a. from the date of the suit till recovery of the full amount. The prayer for grant of interest @ 18% p.a. assumes significance in the peculiar facts and circumstances of the present case.

8. A perusal of the impugned order shows that the Trial Court has dismissed the application filed on behalf of the petitioner in a most cryptic manner. The application filed on behalf of the petitioner stated in detail as to the reasons why the written statement could not be filed earlier. It was pointed out that after the parties had entered into the agreement, it came to the knowledge of the petitioner that there was a serious cloud over the title of the respondent in

the land in question, as some other person was in possession thereof claiming on the basis of a registered Sale deed. It was stated that when the petitioner allegedly confronted the respondent with the said situation, assurance was given that the matter would be sorted out. It was also stated that the petitioner was under the impression that the matter would be settled and there would not be any requirement to file written statement, as a result of which there was delay in placing on record written statement.

9. Although the learned counsel appearing for the respondent appears to be justified in submitting that such stand as was taken in the application filed on behalf of the petitioner could have been taken in the written statement itself, which ought to have been filed within stipulated period of time, the relevant aspect in the present case is as to in what manner the petitioner would have gained by delaying filing written statement, even when all the aforesaid claims on facts made by him were within his knowledge. Delay in filing written statement despite claiming such state of affairs was indeed detrimental to the interest of the petitioner himself and therefore, it is difficult to accept the proposition that only because there has been delay in filing written statement the order of proceeding without written statement passed by the Trial Court was justified.

10. The endeavor of the Courts usually is to decide disputes between the parties on merits and to proceed in a one sided manner only when it is found that one of the

parties has been recalcitrant and it has deliberately violated the regime of time periods provided for placing pleadings on record. In the peculiar facts and circumstances of the present case, this Court is of the opinion that the explanation put forth on behalf of the petitioner ought to have been considered by the Trial Court while deciding the application filed on his behalf. The impugned order shows that no such consideration was given and merely because there was a lapse of **03 years and 04 months** in filing the application, the same was rejected by the Trial Court.

11. As noted above, the prayers in the suit filed on behalf of the respondent are of significance in the facts and circumstances of the present case, because a specific prayer is made for grant of interest @ 18% p.a. from the date of filing of the suit. The delay in disposal of the suit on account of delay in filing the written statement on behalf of the petitioner would ultimately be detrimental to the interest of the petitioner himself, because if the suit stands decreed, the respondent would be entitled to interest as may be granted by the Trial Court from the date of the filing of the suit. Looked at from this angle it becomes evident that the Trial Court ought not have passed a cryptic order while rejecting the application filed by the petitioner and in the interest of justice, the same ought to have been granted.

12. This Court would have considered granting costs in favour of the respondent while allowing the present writ petition, but in view of the fact that in compliance with order

dated 11/08/2016 passed by this Court directing the petitioner to deposit an amount of Rs.14,00,000/- [Rs. Fourteen Lakh only] before the Trial Court, the petitioner has indeed deposited the amount within the stipulated period, thereby showing his bonafide. Hence, this Court is of the opinion that costs need not be granted as the interest of respondent is sufficiently taken care of.

13. In view of above, the present writ petition is allowed. The impugned order is quashed and set aside and the application filed by the petitioner (Exh.31) is allowed in terms of the prayer made therein. Since the written statement was placed before the Trial Court along with the said application by the petitioner, the Trial Court is directed to take the same on record and to proceed to dispose of suit from that stage.

14. The Trial Court is further directed to dispose of the suit expeditiously and in any case within a period of one year from today.

JUDGE