

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

WRIT PETITION NO.4403 OF 2017

(VASANTA DNYANESHWAR RAUT..VS.. MADHUKAR PANDURANG WAWAGE & OTH.)

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

Court's or Judge's orders

Shri T.U.Tathod, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : JULY 03, 2019.

None appears for the respondents, though served.
Heard Shri T.U. Tathod, Advocate for the petitioner.

The petitioner/defendant No.1 had filed application under Order 7 Rule 11 of the Code of Civil Procedure contending that the plaint was liable to be rejected. This application was dismissed by the trial Court by order dated 18th April 2016 with costs of Rs.2,000/-. The written statement was not filed by the defendant No.1 till the order dated 18th April 2016 was passed. The written statement came to be filed after the prescribed time, there being delay of about 4 months and 15 days. Along with written statement, the defendant No.1 had filed an application praying that the written statement be taken on record and he be permitted to deposit the amount of Rs.2,000/- towards costs as directed by the order dated 18th April 2016. By order dated 29th June 2016, the trial Court granted the request made on behalf of the defendant No.1, however, on condition that defendant No.1 deposited further amount of Rs.1,500/- towards costs. The defendant No.1 failed to deposit the amount of Rs.2,000/- towards costs as per order dated 18th

April 2016 and also Rs.1500/- as per order dated 29th June 2016. The civil suit progressed and the plaintiffs' witnesses came to be examined. At the stage of cross-examination of the plaintiffs' witness, the defendant No. 1 filed application (Exh.35) seeking permission to deposit the amount of Rs.3,500/- towards costs as per order dated 18th April 2016 and 29th September 2016. The defendant No.1 further prayed that his written statement be taken on record. This application (Exh.35) is dismissed by the impugned order. In paragraph 9 of the impugned order, the learned trial Judge has recorded that the conduct of the defendant No.1 is unpardonable. It appears that the defendant No.1 adopted dilatory tactics in a calculated manner to protract the proceedings. I find that the order passed by the learned trial Judge is proper and just in the facts of the case. It cannot be said that the learned trial Judge has committed any illegality or error of jurisdiction while passing the impugned order.

Hence, the writ petition is **dismissed** with costs quantified at Rs.10,000/- to be paid by the petitioner/defendant No.1 to the plaintiffs.

The amount of Rs.10,000/- shall be deposited by the petitioner/defendant No.1 before the trial Court within two months. If the defendant No.1 fails to deposit the amount of costs, within two months, the learned trial Judge shall pass appropriate order against him treating it to be disobedience of the directions given by this Court.

JUDGE