

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 8196/2018

(RAMCHANDRARAO BHOLAJI SHRIRAME THR. POA KAILASH RAMCHANDRARAO SHRIRAME
VERSUS PILAJI GADIJI BHOYAR & ANOTHER)

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

Court's or Judge's orders

Shri Y.R. Kinkhede, counsel for petitioner.
Shri R. Vaidya, Advocate with Shri A. Parchure, counsel for R-1 & 2.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 22, 2019.

The challenge raised in the present writ petition is to the order dated 28.06.2018 passed by the trial Court on the application that was moved by the original plaintiff below Exhibit 103 praying that the proceedings in the suit be fixed for recording evidence of the defendants in the light of earlier orders passed.

The petitioner is the original plaintiff who has filed suit for specific performance of an agreement. In that suit on 29.09.2014, an order declining the cross-examination by the defendants came to be passed. Hence, the application below Exhibit 86 for setting aside that order and another below Exhibit 87 for recalling witness nos.3 and 4 for cross-examination came to be moved. The trial Court by its order dated 09.09.2015 set aside the no-cross order by allowing the application below Exhibit 86 subject to paying costs of Rs.5,000/- to the plaintiff. The application below Exhibit 87 was allowed subject to the defendants depositing the process fees by the next date. It appears that costs of Rs.5,000/- were not deposited by the defendants and instead they filed an

application for review of that order. The application for review came to be rejected by the trial Court by passing the order below Exhibit 92 on 16.08.2016. Since according to the plaintiff there was no compliance with the earlier direction issued he moved an application dated 18.01.2018 below Exhibit 103 for recording the evidence of the defendants. The trial Court rejected the said application on 28.06.2018 and directed the parties to proceed further in the suit. Being aggrieved, the plaintiff has filed the present writ petition.

Shri Y.R. Kinkhede, learned counsel for the petitioner submitted that the trial Court was not justified in extending the period for depositing costs of Rs.5,000/- as imposed by the order passed below Exhibit 86. Referring to the provisions of Section 148 of the Code of Civil Procedure, 1908 as well as the judgment in *Manohar Singh Versus D.S. Sharma & Another* [(2010) 1 SCC 53] it was submitted that the time to deposit costs could not have been extended beyond the period of one month. Since the defendants failed to comply with the directions issued while allowing the applications at Exhibits 86 and 87, the trial Court ought to have allowed the application that was filed below Exhibit 103. On this count, the order was liable to be set aside.

Shri R. Vaidya, learned counsel for the respondent on the other hand supported the impugned order. He submitted that though an application for review was filed as regards the amount of costs, after the review application was rejected, the costs of Rs.5,000/- were deposited as per the order passed below Exhibit 97 on 01.10.2016. He further submitted that the process fees as required to be paid by the order passed below Exhibit 87 were also

duly deposited. The trial Court was therefore justified in observing that the plaintiff was raising a technical ground and it was thus submitted that the impugned order did not call for any interference.

Heard the learned counsel and perused the documents placed on record. It is not in dispute that on 09.09.2015, the applications below Exhibits 86 and 87 came to be allowed. The defendants were directed to pay costs of Rs.5,000/- for setting aside the no-cross order. The review application filed by them was rejected on 16.08.2016. Thereafter, by seeking permission of the Court which came to be granted on 01.10.2016, the costs of Rs.5,000/- came to be deposited. This order passed below Exhibit 97 on 01.10.2016 was not challenged by the plaintiff. Similarly, the process fees as directed to be paid by the order passed below Exhibit 87 were also duly deposited. It is only on 18.01.2018 that the plaintiff filed the present application. The trial Court has merely observed that the provisions of Section 148 of the Code empower the Court to extend the time in a fit case. As noted above, the order passed below Exhibit 97 extending the time to deposit the costs is not under challenge. In that view of the matter, I do not find that the trial Court erred while rejecting the application that was filed below Exhibit 103. The apprehension expressed on behalf of the plaintiff that the proceedings would be delayed can be taken care of by directing expeditious disposal of Regular Civil Suit No.760 of 2006. The said proceedings in the suit are expedited and the trial Court shall decide the same by the end of December-2019. It shall not grant unnecessary adjournments to the parties. The suit be decided on its own merits and in accordance with law.

With these observations, the Writ Petition is disposed of. No costs.

JUDGE

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