

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3447 OF 2019

Deepak Devchand Nagda

.Petitioner

Vs.

Rukhmini Baburao Mhaske

.Respondent

Mr. P. B. Thakkar, Advocate, for the Petitioner

Mr. A. G. Damale i/b. Mr. M. P. Patil, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 20.02.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 16.11.2018 passed by the learned C. J. J. D., Thane below Exh. 16 in R. C. S. No. 437 of 2015, by which the learned Judge was pleased to reject the Petitioner's Application seeking permission to deposit costs of Rs. 2,000/-, as directed vide order dated 29.01.2018.

3. Learned counsel for the Petitioner submits that the Petitioner could not deposit costs of Rs. 2,000/- as directed by this Court vide order dated 29.01.2018, within time i. e. on or before 10.03.2018, due to some financial difficulties. He submits that the Petitioner be given one more opportunity to file his Written Statement, so that the suit

can proceed on its own merits.

4. Learned Senior Counsel for the Respondent opposes the Petition. He submitted that no interference is warranted in the impugned order. Learned counsel tendered a copy of the order dated 19.03.2018 passed by the learned Jt. C. J. J. D., Thane below Exh. 14 in R. C. S. No. 437 of 2015, by which the trial Court re-called the permission granted to the Petitioner to file his Written Statement and directed that the suit to proceed without Written Statement. The said order dated 19.03.2018 is taken on record.

5. Perused the papers. The Respondent is the Original Plaintiff, who has filed R. C. S. No. 437 of 2015 in the Court of the learned C. J. J. D., Thane as against the Petitioner (Original Defendant), for eviction. It appears that the Petitioner (Original Defendant) appeared in the said suit, however, did not file his Written Statement and hence, the trial Court passed an order of “No W. S.” on 05.10.2016. A perusal of the roznama indicates that the Petitioner filed an Application i. e. Exh. 14 only on 08.09.2017 i. e. almost after 11 months and prayed for setting aside the order of “No W. S.” passed by the trial Court dated 05.10.2016. It appears that during the said period i. e. between 05.10.2016 and 08.09.2017, the matter was on board of the trial Court on four dates, however, it is only after about 11 months, the

said Application (Exh. 14) was filed for setting aside the order of “No W. S.”. The trial Court vide order dated 29.01.2018 allowed the said Application (Exh. 14) subject to the Petitioner paying costs of Rs. 2,000/- to the Respondent (Original Plaintiff) on or before the next date i. e. on or before 10.03.2018. In the said order, the trial Court had made it clear that in the event, the Petitioner failed to pay costs of Rs. 2,000/- within the said time, the order permitting him to file his Written Statement shall stand re-called, without further notice. Admittedly, the Petitioner (Original Defendant) failed to pay Rs. 2,000/- to the Respondent (Original Plaintiff) on or before 10.03.2018. It appears that thereafter, the Petitioner filed an Application on 10.07.2018 and sought permission to deposit costs of Rs. 2,000/- in the Court. It is pertinent to note that prior thereto, i. e. on 19.03.2018 itself, the trial Court had passed a further order below Exh. 14 which reads as under :-

**“FURTHER ORDER BELOW EXH. 14 IN
RCS 437/2015**

The defendant and concern advocate absent, though repeatedly called. It is 4.15 p. m. In the order below Exh. 14 dt. 29.01.2018, the consequences for default to pay the cost before recess were highlighted. After passing of the said order, concern advocate for defendant has apprised himself/herself regarding said order by putting signature below it. Howbeit, concern did not comply the order. Such non-compliance has its own effect. The plaintiff has filed a pursis (Exh. 15), wherein, it is expressed that no

cost has been paid. In view of such antecedents, the willful default of the defendant shows that he has no regard for the order of the Court. Hence, permission to file written statement as per order below Exh. 14 is recalled. Suit to proceed without written statement. Be noted.”

6. The aforesaid order dated 19.03.2018 passed by the trial Court has not been challenged. In fact, in view of the said order dated 19.03.2018, the trial Court passed the order dated 16.11.2018 which reads as under :-

“Vide order below Exh. 14, order to deposit cost is recalled. Hence, this application does not survive. Hence, rejected.”

7. It is only this order dated 16.11.2018 which has been impugned in the present Petition. A perusal of the Application (Exh. 16) and having regard to the conduct of the Petitioner i. e. in trying to delay the hearing of the said case, no ground is made out for interfering in the said order. As noted above, despite the order of “No W. S.” having been passed on 05.10.2016, it is only in January, after 11 months i. e. on 08.09.2017 that the Petitioner filed an Application for setting aside the order of “No W. S.” which was allowed by the trial Court on 29.01.2018 subject to the Petitioner depositing costs of Rs. 2,000/-, which costs the Petitioner did not deposit despite the Petitioner being directed to do so.

8. It is also pertinent to note, that the Petitioner has not even challenged the order dated 19.03.2018, by which the trial Court recalled its order passed below Exh. 14 granting permission to file Written Statement and directed that the suit to proceed without the Written Statement. The Application seeking permission to deposit was also filed belatedly i. e. on 10.07.2018 (after about 4 months).

9. Considering the conduct of the Petitioner, no infirmity can be found in the impugned order warranting interference in the same.

10. Accordingly, the Petition is disposed of.

11. The trial Court to decide the suit on its own merits uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)