

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

Writ Petition No.6235 of 2019
Vilas Saoji Vs. Sachin Sharma

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

Court's or Judge's orders

Mr. S.M. Tirukh, Advocate for the petitioner
Mr. C.R. Sharma, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : JANUARY 28, 2020

By this writ petition, the petitioner (original plaintiff) has challenged order dated 19/06/2019, passed by the Court of 3rd Jt. Civil Judge (Junior Division), Khamgaon, whereby an application at Exh.27, filed on behalf of respondent (original defendant), for permission to cross-examine the petitioner and to file affidavit-in-evidence on the part of the respondent, by setting aside of order dated 24/09/2018, was allowed subject to payment of costs of Rupees One Thousand to the petitioner.

2. The petitioner has filed a suit for possession and arrears of rent against the respondent, claiming that the respondent is in arrears of rent and that the suit property is required for bonafide need of the petitioner. The respondent filed his written statement before the Court below and the petitioner tendered his evidence in support of his claim. At this stage, when

the respondent was supposed to cross-examine the petitioner, record shows that he continuously remained absent for 14 dates and he failed to cross-examine the petitioner. On 25/06/2018, the Court below passed order of no cross against the respondent herein. Thereafter, on 24/09/2018, the Court below passed a further order stating the respondent would no longer have any right to place his evidence on record.

3. It was in the backdrop of the said order that the aforesaid application at Exh.27 was filed on behalf of the respondent. The reasons given in the said application were not accepted by the Court below, as is evident from paragraph 4 of the impugned order. It is specifically observed by the Court below that the absence of the respondent was not justified. Yet, the Court below allowed the said application, stating that it would be in the interest of justice and it was held that the payment of costs of Rupees One Thousand to the petitioner would compensate him for the inconvenience caused for the absence of the respondent.

4. The learned counsel appearing for the petitioner vehemently submitted that the impugned order passed by the Court below was self-contradictory as on one hand, the absence of the respondent was held to be not justified and on the other hand, the application stood allowed with meager costs of Rupees

One Thousand. It was submitted that the respondent had deliberately delayed the proceedings before the Court below and he ought not to gain from such an approach adopted before the Court below.

5. On the other hand, the learned counsel appearing for the respondent submitted that it would be in the interest of justice that the *lis* between the parties be decided on merits, particularly when the Court below had already exercised discretion in favour of the petitioner.

6. A perusal of the impugned order shows that the impugned order is self-contradictory, because if it is found that the contention of the respondent is not justified. Yet, the application at Exh.27 was allowed by the Court below. Consequence of the same is that despite the approach adopted by the respondent in delaying the proceedings before the Court below on as many as 14 dates, the respondent would still have privilege of cross-examining the petitioner or adducing his own evidence before the Court below. This Court is of the opinion that the impugned order being self-contradictory does not deserve to be confirmed, but, considering the fact that discretion was exercised by the Court below, in the interest of justice perhaps in order to ensure that the dispute between the parties should ideally be decided on merits, this Court refrains from interfering with the impugned order.

7. But, the question of sufficiently compensating the petitioner due to obvious strategy of delay adopted by the respondent needs to be considered. The cost of Rupees One Thousand, is wholly inadequate in the facts and circumstances of the present case, particularly when the reasons for absence without cogent reasons for as many as 14 dates before the Court below and for having delayed the proceedings, thereby causing inconvenience to the petitioner are not found acceptable even in the impugned order. This Court finds that the respondent is liable to pay heavy costs to the petitioner, for having adopted dilatory tactics.

8. In view of the above, the writ petition is disposed of with a direction to the respondent to pay costs of Rupees Fifty Thousand to the petitioner within a period of four weeks from today. The impugned order is modified to that extent. It is only after the respondent pays the aforesaid costs within the said period of time to the petitioner that the Court below shall take up the proceedings further to grant opportunity of cross-examination to the respondent and to adduce his evidence.

9. It is made clear that if such amount of costs is not paid within the period of four weeks from today, the impugned order shall stand set aside and the

earlier orders of no cross and directing that the respondent shall not have right to adduce evidence shall stand revived. Upon such costs being deposited and proceedings commencing before the Court below, the suit filed by the petitioner shall be decided finally by the Court below within a period of six months from today.

10. It is further made clear that even if the costs are not deposited within stipulated period of time and earlier orders stand revived, the Court below shall dispose of the suit within the aforesaid period of six months.

11. The writ petition is disposed of in above terms.

JUDGE

MP Deshpande