

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1382 OF 2020

1. Subhash s/o Ganpat Charawande,
Age; 60 years, Occupation -Agri,
R/o. Deolgaon Wadi, Tq.Sillod,
Dist. Aurangabad.
2. Jadusing s/o Ganpat Charawande,
Age- 40 years, Occupation- Agri,
R/o. Deolgaon Wadi, Tq.Sillod,
Dist. Aurangabad.
3. Nirmalabai w/o Dayaram Charawande,
Age- 45 years, Occupation- Agri,
R/o. Deolgaon Wadi, Tq.Sillod,
Dist. Aurangabad.
4. Sakubai w/o Bhavsing Charawande,
Age- 45 years, Occupation-Agri,
R/o. Deolgaon Wadi, Tq.Sillod,
Dist. Aurangabad.
5. Ishwar s/o Bhavsing Charawande,
Age- 35 years, Occupation- Agri,
R/o. Deolgaon Wadi, Tq.Sillod,
Dist. Aurangabad.
6. Popat s/o Bhavsing Charawande,
Age- 32 years, Occupation-Agri,
R/o. Deolgaon Wadi, Tq.Sillod,
Dist. Aurangabad.
7. Prakash s/o Bhavsing Charawande,
Age- 27 years, Occupation -Agri,
R/o. Deolgaon Wadi, Tq.Sillod,
Dist. Aurangabad.
8. Narayan Shamsing Charawande,
Age- 40 years, Occupation- Agri,
R/o. Deolgaon Wadi, Tq.Sillod,

Dist. Aurangabad.(formal party)

...Petitioners.
(Original Defendants)

VERSUS

Ambarsing s/o. Kanhiram Charawande,
Age- 63 years, Occu. Nil,
R/o- Deolgaon Wadi,
Tq. Sillod, Dist. Aurangabad.

Through :- GPA

Ramsing s/o Ambarsing Charawande,
Age; 63 years, Occu.: Agril,
R/o. Deolgaon Wadi,
Tq. Sillod, Dist. Aurangabad.

...Respondent.
(Original Plaintiff)

...
Advocate for Petitioners : Mr.Shaikh Kayyum Najir
Advocate for Respondent : Mr. S.D.Hiwrekar
...

CORAM : N.J. JAMADAR, J.

DATE : 19/03/2021

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and, with the consent of the counsel for the parties, heard finally at the stage of admission.

2. The challenge in this petition is to an order dated 07th October, 2019 passed by the learned IInd Jt. Civil Judge, Junior Division, Sillod, District Aurangabad on an application vide (Exh. 19) seeking permission to deposit the costs after the period stipulated, initially by order dated 19th September, 2016, and extended by order dated 25th

April, 2019, at the pain of depositing of additional costs of Rs. 2,000/- expired, whereby the said application came to be rejected.

3. The petition arises in the backdrop of following facts :

a) The respondent instituted the suit against the petitioners-defendants for recovery of the possession of the suit land. The petitioners-defendants did not file written statement within the prescribed period. Hence “No. W.S.” order came to be passed against the petitioners-defendants on 19th September, 2014. The petitioners-defendants preferred an application to set aside the “No. W.S.” order and permit the petitioners-defendants to file the written statement. By an order dated 19th September, 2016 the learned Civil Judge was persuaded to set aside the “No. W.S.” order and allow the petitioners-defendants to file the written statement subject to payment of costs of Rs. 3,000/-. The petitioners-defendants did not pay costs till 18th March, 2019 and sought permission to deposit the costs by filing application (Exh. 18). By order dated 25th April, 2019, the learned Civil Judge allowed the said application with a direction to the petitioners-defendants to pay additional costs of Rs. 2,000/- on or before the next date, Two dates elapsed. Yet the petitioners-defendants did not deposit the costs.

b) Eventually, the instant application (Exh. 19) came to be filed seeking further extension of time to deposit the costs. The learned Civil Judge was persuaded to reject the application as the petitioners-

defendants failed to deposit the costs, despite extension of time by order dated 25th April, 2019. The learned Civil Judge was of the view that no sufficient cause was made out for extension of time. Being aggrieved, the petitioners-defendants are before this Court.

4. When the petition was listed, on 28th January, 2020, this Court directed the petitioners-defendants to deposit an amount of Rs. 20,000/- in this Court. The Court further recorded that the issue which crops up for consideration, in this petition, is, whether Section 148 of the Code of Civil Procedure, 1908, ('the Code') is mandatory or directory and whether the case is made out for permitting the petitioners-defendants to deposit the costs by extending the time.

5. I have heard the learned counsel for the petitioners-defendants and the learned counsel for the respondent-plaintiff at length.

6. It was urged on behalf of the petitioners-defendants that on account of unavoidable situation, the petitioners-defendants could not deposit the costs within the extended period. The omission to deposit the costs was not intentional. The learned Civil Judge, Sillod, in the circumstances of the case, ought to have extended the time. The refusal to extend time to deposit costs results in serious prejudice to the defendants as they would be deprived of the opportunity to defend the

suit. The learned counsel for the petitioners-defendants further urged that the petitioners-defendants are ready to deposit further costs of Rs. 5,000/- before the Trial Court, in addition to the sum of Rs. 20,000/- which is deposited in this Court and which may be ordered to be paid to the respondent-plaintiff.

7. The learned counsel for the respondent-plaintiff, on the other hand, urged that the failure to deposit costs, in the circumstances of case, was a part of dilatory tactics on the part of the petitioners-defendants. There was no reason, much less justifiable one, for not depositing the costs within the period extended by order dated 25.4.2019. The learned Civil Judge, thus, correctly exercised the discretion not to extend the time. Moreover, in view of provisions contained in Section 148 of the Code, the Court could not have extended the time beyond the period of 30 days.

8. The sequence of events, adverted to above, indicates that the petitioners-defendants did not diligently defend the suit. The costs was not paid in pursuance of the first order dated 19th September, 2016 for an inordinate period. Even after extension of time by order dated 25th April, 2019, at the pain of additional costs of Rs. 2,000/-, the petitioners-defendants took no pain to deposit the costs within the time stipulated by the said order. In these circumstances, the learned Civil Judge was

justified in observing that despite lapse of two dates after the order dated 25th April, 2019 the petitioners-defendants failed to deposit the costs.

9. The issue which warrants consideration is, whether despite the omission and lapse on the part of petitioners-defendants, could the Court have exercised discretion under Section 148 of the Code, 1908 ?

10. **Section 148 of the Code**, reads as under :

"148. Enlargement of time.--- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period not exceeding thirty days in total, even though the period originally fixed or granted may have expired."

11. Initially, there was no restriction as to the period which could be enlarged by the Court. By the amendment, in the year 2002, the words 'not exceeding 30 days' were inserted in Section 148 of the Code. Nonetheless, the provisions contained in Section 148 of the Code invest the Court with the discretion to enlarge the period stipulated by the Code for the performance of an act, even though the time originally fixed or granted by the Court might have expired. The avowed purpose of the aforesaid provision is to empower the Court to exercise discretion to extend the time to meet the ends of justice.

12. The Supreme Court in the case of **Salem Advocate Bar**

Association, Tamilnadu Vs. Union of Indina- (2005) 6 SCC 344, held that provisions contained in Section 148 of the Code are directory in nature. It was inter-alia observed as under :

"There can be many cases where non-grant of extension beyond 30 days would amount to failure of justice. The object of the Code is not to promote failure of justice. Section 148, therefore, deserves to be read down to mean that where sufficient cause exists or events are beyond control of a party, the Court would have inherent power to extent time beyond 30 days."

The aforesaid pronouncement has been followed by the Supreme Court in the cases of **Manohar Singh Vs. D.S. Sharma and another (2010) 1 Supreme Court Cases 53**, **D.V. Paul Vs Manisha Lalwani (2010) 8 Supreme Court Cases 546** and **Nashik Municipal Corporation Vs. R.M. Bhandari (2016) 6 Supreme Court Cases 245**.

13. In the backdrop of the aforesaid legal position, the Court, in a given case, if satisfied of the justness of the cause made out for extension of time, can enlarge the time beyond the period of 30 days stipulated in Section 148 of the Code.

14. The moot question that arises for consideration is whether, in the facts of the case, the petitioners-defendants have made out such a case. The reason assigned by the petitioners-defendants was that of the sickness of defendant No. 7. The learned Civil Judge was of the view that

the order could have been complied with by rest of the defendants. The inaction on the part of the petitioners-defendants, in the instant case, is writ large. However, the substance of the matter is required to be looked at. The Court is expected to take a lenient view of the matter so that the cause of substantive justice is advanced.

15. In the case at hand, the petitioners-defendants have deposited a sum of Rs. 20,000/- in this Court. It is said that the costs is a panacea for the inconvenience and delay caused in civil proceedings.

16. In the aforesaid view of the matter, the ends of justice would be met, if the impugned order is set aside and the costs to be paid for setting aside the “No. W.S.” Order is enhanced to Rs. 25,000/-. The plaintiff-respondent can be compensated for the inconvenience and delay by directing that the sum of Rs. 20,000/- deposited in this Court be allowed to be withdrawn by respondent-plaintiff. Hence, the following order :

ORDER

- . The petition stands allowed.
- . The impugned order dated 7th October, 2019 stands quashed and set aside.
- . The orders of payment of costs dated 19th September, 2016, and 25th April, 2019 stand modified to the extent of quantum of costs and the petitioners-defendants shall now pay costs of Rs. 25,000/- (Rs. Twenty Five Thousand only).

- . The petitioners-defendants are permitted to deposit the costs of Rs. 5,000/- in the Trial Court within a period of three weeks from today.
- . The sum of Rs. 20,000/- (Rs. Twenty Thousand only) deposited by the petitioners-defendants in this Court, shall be appropriated towards the costs and the said sum of Rs. 20,000/- be paid to the respondent-plaintiff.
- . In view of the delay which has occasioned, the learned Civil Judge is requested to make an endeavour to hear and decide the suit as expeditiously as possible.
- . The parties, especially petitioners -defendants, shall co-operate in expeditious hearing and disposal of the suit.
- . Rule made absolute in aforesaid terms.

(N.J. JAMADAR)
JUDGE

mahajansb/