

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1194 OF 2020
WITH
WRIT PETITION NO.1300 OF 2021

Sheetal Sitaram Gujar .. Petitioner
Versus
Jagdish Yashwant Indulkar .. Respondent

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Ms.Vrushali Maindad with Mr.Ajinkya Udane for the petitioner.

Ms.Deepti N. Wadkar for the Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 01st DECEMBER, 2021

P.C:-

1. The two writ petitions assail the order passed below Exh.76 in Regular Civil Suit NO.15 of 2015 and it is prayed that the order of “No WS and No say Order” be set aside.

2. The respondent/plaintiff filed a Regular Civil Suit No.15 of 2015 for possession and injunction and in the said suit, the present petitioner is impleaded as defendant No.1, where relief sought is for demolition of the unauthorised and illegal construction erected by defendant No.1 on the suit property. If not, then appoint a Court Commissioner and by issuing the necessary directions to the Gram Panchayat, the demolition

should be carried out and the plaintiff shall be put in possession of the suit property.

3. On summons being issued, defendants were directed to file the written statement within 30 days. On 02/02/2016, defendant No.1 appeared, but since no written statement was filed within the stipulated period, there was an order passed to the following effect on 02/04/2016.

“Def. No.1 appeared on 2.2.16. The period of limitation to file W.S. has been lapsed. Hence suit to proceed without W.S. of Def.No.1.”

4. After lapse of 33 months and to be specific, on 02/07/2019, defendant No.1 took out an application for setting aside the ‘No WS order’. It was pleaded that she was seriously ill and could not undertake travel and was unable to give instructions to her counsel to enable him to file the written statement. The application filed below Exh.76 was opposed by the original plaintiff by traversing her contention that she was ill; it was pleaded that on every date, defendant No.1 used to remain present in the Court and, therefore, the order passed do not call for any interference.

5. The learned Judge, on 16/09/2019, rejected the application and has reasoned the same by listing the chronology of events in the suit. The lapse on part of defendant No.1 is recorded in paragraph 3 of the order in the following words,

“Perused the application and the entire record of the case. Heard both the parties. The suit is filed on 06.10.2015. The no say and no written statement order against defendant No.1 was passed on 07.04.2016. Thereafter, the matter was kept for plaintiff’s evidence. Plaintiff filed his affidavit in lieu of examination-in-chief at Exh.51 on 09.04.2018 and affidavit in lieu of examination-in-chief of his witness at Exh.52 on 17.07.2018. Plaintiff closed his evidence on 11.12.2018. Thereafter, suit was kept for evidence of defendant, but in spite of sufficient opportunities, defendant has not produced any evidence, therefore, evidence of defendant is closed on 09.04.2019 and suit is listed for argument. Thereafter, on 02.07.2019 the present application has been filed. From perusal of records itself shows that, ample opportunity has already been given to the defendant, but in spite of it she failed to do necessary compliance.”

6. Recording that the suit is about four years old and defendant No.1 put her appearance for the first time on 02/02/2016, with her presence being marked on every date of hearing, the reason cited being unable to travel was found to be false. The Court also recorded that she was given ample opportunity to file her written statement and also for cross-examination, but her intention was apparently clear, being to drag the said suit. In the wake of the aforesaid observations, the request made by defendant No.1/the petitioner is declined.

I see no justifiable ground to interfere with the said order, since it is the settled position of law that the party prosecuting her/his remedy before the Court must be diligent and a litigant who sleep over his rights, cannot cry hoax and argue that there is a violation of principle of natural justice. Here is the litigant who took 33 months to bring an application for setting aside “No WS and No Say Order” and on the reason cited was found to be incorrect, since it is recorded that she was attending the proceedings on every date of hearing, her justification was declined.

Finding no legal infirmity in the impugned order, the same is upheld and both the writ petitions are dismissed.

(SMT. BHARATI DANGRE, J.)