

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

WRIT PETITION NO.1499 OF 2022

Dilip S/o Ghansham Narang	]	
Age : 62 Years, Occu. : Business,	]	
R/o Kalpana Dresses, Old Cloth Market,	]	
Ahmedangar	]	... Petitioner [Defendant]

Versus

Smt. Lalitabai Gopaldas Gujrathi	]	
@ Sushma Shashikant Parikh	]	
Age : 77 Years, Occu. : Nil,	]	
Through its General Power of Attorney,	]	
Pramod S/o Shashikant Parikh,	]	
Age : 54 Years, Occu. : Business,	]	
R/o. 3175, Old Cloth Market, Ahmednagar.	]	... Respondent. [Plaintiff]

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Advocate for Petitioner : Mr. Vinayak S. Bedre
Advocate for Respondent for Respondent : Mr. P. K. Nikam

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CORAM : MANGESH S. PATIL, J.

DATED : 27 JUNE 2022

ORAL ORDER :

1. Heard. Rule. The Rule is made returnable forthwith. With the consent of the parties, the matter is heard finally at the stage of admission.

2. The petitioner who is facing the suit for evicting under the Maharashtra Rent Control Act, 1999, is aggrieved by the order passed by the trial court, whereby, the respondent's application under Order IX Rule 9 of the

Code of Civil Procedure has been allowed and the suit has been restored subject to payment of cost of Rs. 1,000 /-.

3. Learned advocate Mr. Vinayak Bedre would vehemently submit that the respondent has been remiss in prosecuting the suit since inception. She had instituted the suit in the year 2006. It was dismissed in default in the year 2008. It was restored subject to the payment of cost of Rs. 1,000/-, even that cost was not deposited. Even thereafter she did not prosecute the suit promptly and allowed it to be dismissed once again in default on 29 October 2015. Even the application for restoration was not preferred in time. There was a huge delay of 34 months. That was condoned by the trial court by the order under challenge. Ignoring the conduct, the trial court has liberally passed the order restoring the suit by imposing meagre cost of Rs. 1,000/-. He would submit that though the respondent is octogenarian, she has two sons, who were looking after the litigation. Without their being any cause shown as to why even they could not keep an eye on the suit it has illegally directed restoration of the suit.

4. Learned advocate Mr. Bedre would submit that even if this suit is dismissed, the respondent would have a right to claim eviction on the ground of reasonable and *bona fide* requirement for personal use and occupation.

5. Learned advocate for the respondent submits that the respondent is an old lady. There were no mala fides attributed to her in not prosecuting

the suit promptly. She has deposited the cost not only imposed in the present order which is under challenge, but also that was directed in the earlier order of restoration.

6. He would further submit that though there was some delay in seeking restoration, the delay was condoned after contest and that order was not challenged by the petitioner and therefore there is no point in going back and examining that aspect of the matter.

7. After permitting both the sides to lead evidence and after going through the oral as well as documentary evidence, the trial court has exercised the discretion vested in it, which cannot be said to be either perverse or arbitrary.

8. I have carefully considered the rival submissions. It is indeed a matter of record that the suit was filed in the year 2006 and it has been dismissed on a previous occasion and was restored.

9. It is also a matter of record that the respondent is not alone. She has couple of sons and attempt was made to demonstrate that even they could not attend to the matter.

10. It is true that a court should not play in the hands of a scrupulous litigant. But then, simultaneously, it cannot be oblivious of the fact that paramount consideration before the courts should be dispensation of justice in

accordance with law.

11. Assuming for the sake of argument that the respondent has not been prompt in prosecuting the suit, still, she was not to gain anything by allowing her right to the lost. No other intention or motive is attributed to her to prolong the litigation.

12. Considering the reasoning given by the trial court, one cannot conclude that the observations and the conclusions are perverse, arbitrary or capricious, so that this court can cause any interference in exercise of writ jurisdiction.

13. Having considered the above state of affairs, it would be appropriate to dismiss the writ petition, however, by directing the trial court to expedite the hearing.

14. Writ petition is dismissed. The trial court shall make an endeavour to decide the suit as early as possible.

15. Rule is discharged.

(MANGESH S. PATIL, J.)

Tandale/-