

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

WRIT PETITION NO.1561 OF 2019

**M/S SANTOSHKUMAR POPATLAL GUGALE
VERSUS
M/S AGRAWAL FOOD PRODUCTS, LATUR**

...
Advocate for Petitioner : Mr. Sahil Choudhari h/f Mr. D. D. Choudhari
Advocate for Respondent : Mr. P. P. More
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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 06th SEPTEMBER, 2022

PER COURT :

1. Challenge in this petition is to the order dated 14/02/2018, passed by learned Civil Judge Senior Division, Nilanga, in Civil Misc. Application No.19/2016, to the extent of direction given to the petitioner to deposit Rs.3,00,000/-.

2. Respondent has filed Special Civil Suit No.15/2013 against petitioner for recovery of amount of Rs.5,92,920/-. Summons was issued in the suit. Thereafter, the suit proceeded *ex parte* against petitioner/defendant and it was decreed by judgment and decree dated 18/02/2014. Thereafter, respondent/plaintiff filed Special Darkhast No.50/2014, in which summons was issued and then the petitioner/judgment debtor filed present Civil Misc. Application No.19/2016 for restoration and setting aside *ex parte* decree in Special Civil Suit No.15/2013. The said application is

resisted by respondent/plaintiff by filing detail written say. Executing Court allowed the application subject to the petitioner depositing Rs.3,00,000/- in the Court. Petitioner is aggrieved by the condition imposed on him to deposit Rs.3,00,000/-.

3. Heard learned advocate for petitioner and learned advocate for respondent.

4. Learned advocate for petitioner pointed out the statement made in the application that petitioner is not proprietor of M/s Santoshkumar Popatlal Gugale firm, but his brother Santosh Kumar Gugale is proprietor and petitioner is a labour, which is accepted by the trial Court while allowing restoration application of the petitioner. He submits that, in this view of the matter, the trial Court erred in directing petitioner to deposit Rs.3,00,000/- while restoring the suit and setting aside the *ex parte* order.

5. Learned advocate for respondent vehemently opposed the petition contending that conduct of petitioner needs to be taken into consideration as the petitioner has refused to receive summons issued in the suit, whereas the summons in execution proceeding was served on the petitioner on same address. He, therefore, submits that petitioner has not come before this Court with clean hands and therefore, trial Court was justified in imposing the said

condition on petitioner.

6. I have given due consideration to the rival submissions of both the parties, perused the grounds raised in writ petition memo, civil application and say filed by respondent.

7. Trial Court has allowed the application filed by petitioner by taking into consideration the fact that the summons was returned due to refusal of defendant, but the said process cannot be said to be valid. The trial Court has also accepted contention of petitioner that he is not proprietor of defendant firm. Copy of the registration certificate filed by petitioner in support of his contention, is also accepted as it was not disputed by respondent. The trial Court, therefore, has held that proprietor of the firm is Santoshkumar Gugale and not Mahesh Gugale, and in the judgment passed in Special Civil Suit No.15/2013, petitioner has been shown as proprietor of the firm. Hence, the grounds raised by petitioner for setting aside *ex parte* decree and restoration of the suit were accepted by the trial Court by drawing inference that summons had been issued in the name of wrong person and there was sufficient reason for petitioner for his absence on the day when the suit was called for hearing.

8. The trial Court further proceeded to impose condition on

petitioner to deposit Rs.3,00,000/- in the Court within two months from the date of order, on the ground that in Special Darkhast No.50/2014 filed by respondent, as per bailiff's report, when bailiff went for execution of the decree, mother of the petitioner caused hurdle in execution of decree and therefore, warrant could not be executed by the bailiff and it is not possible to execute the decree without police aid. On this ground, the trial Court has held that, *"if this is taken into consideration, then in my opinion, it will be just and proper to direct the applicant to deposit Rs.3,00,000/- in the Court, so that if in future the suit came to be decreed the plaintiff will not be harassed again and he will get the said amount."*

9. This Court is of the considered view that the trial Court has committed serious error in imposing the said condition on petitioner. When the trial Court has accepted contention of petitioner that he is a labour and not proprietor of defendant firm, there was no reason for the trial Court to impose such onerous condition for restoration of the suit. The condition imposed in the facts of the present case appears to be unreasonable, unwarranted and uncalled for. Reason assigned for imposing said condition is also unacceptable.

10. In that view of the matter, writ petition is allowed. Impugned condition of depositing Rs.3,00,000/- is hereby quashed

and set aside.

11. The petitioner shall pay cost of Rs.25,000/- to the respondent within a period of four weeks from the date of receipt of this order, in the trial Court. The trial Court shall expedite the suit and decide the same within a period of six months from the date of receipt of writ of this order.

(NITIN B. SURYAWANSHI, J.)

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