

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

WRIT PETITION NO.12621 OF 2021

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
AND ANOTHER
VERSUS
RAVINDRA BANSILAL SANCHETI

...

Advocate for the Petitioners : Shri Shelke Avishkar S.
Advocate for the Respondent : Shri A.D. Kasliwal

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 03rd January, 2022

Per Court:

1. The Writ Petition is filed by the Maharashtra State Electricity Distribution Company Limited, the licensee under the provisions of the Electricity Act, 2003, which is responsible for distribution of electricity in the State of Maharashtra.

The petitioner, who is the original defendant in Special Civil Suit No.31/2019 instituted by the respondent/ plaintiff for recovery of the amount, is aggrieved by the order passed below Exhibit 38, whereby, the application moved by it praying for setting aside the ex-parte order and “no WS” order, has been rejected.

2. Heard the learned counsel for the petitioner and the respondent.

3. The plaintiff/ respondent filed Special Civil Suit No.31/2019

seeking declaration and for recovery of the amount of Rs.14,14,688/-, in the month of September, 2019. The background being that the father of the plaintiff was the consumer of the petitioner and it is alleged that there was theft of electricity committed by him resulting in registration of the First Information Report. The petitioner company claims that the consumer compounded the offence by depositing the theft assessment bills along with the compounding charges, still the plaintiff instituted the suit for recovery of the amount.

I need not delve deep into the controversy since I am concerned with the impugned order, which has refused to set aside the “no W.S.” order passed against the defendants.

4. It is to be noted that in the suit for recovery, the petitioner company was impleaded as defendant No.1 whereas, it's Deputy Executive Engineer is impleaded as defendant No.2. Defendant No.1 was served with the summons of suit on 09.12.2019 whereas, defendant No.2 was served on 06.11.2019. In the absence of their appearance on receipt of summons, the learned Judge has passed the following order dated 29.02.2020:-

- “1) *In spite of due service of summons to deft. No.1 in view of Report Exh.13, deft. No.1 failed to appear. Hence suit to proceed ex-parte against deft. No.1.*
- 2) *Deft. No.2 though appeared but failed to file W.S. Hence suit to proceed without W.S. against deft. No.2.”*

5. On 20.10.2021, the defendants in the suit moved an application vide Exhibit 38, seeking leave to defend and file the Written Statement by setting aside the order dated 29.02.2020. The relevant portion of the abbreviated application reads thus:-

“That the above matter fix on today’s board for hearing, but in the above case defendant no.1 failed to appeared and defendant no.2 failed to file written statement before this hon’ble court on previous hearing therefore this hon’ble court on 29.02.2021 an order of Ex-party and No WS passed against the defendant no.1 and 2 respectively.

That the above named defendant submits that the defendant is a public authority therefore they have much more official work and further due to the spread of covid-19 and sudden lockdown in various time therefore defendant are unable to come before this Hon’ble Court.

That the above suit filed plaintiff for recovery of money from defendant against defendant and defendant having inherent right in suit therefore their written statement is very essential for determining the rights of parties hence and order of Ex-party and No WS dated 29.02.2021 passed against the defendant no.1 and 2 respectively may kindly be set aside.”

6. Perusal of the above reveals that, the application is sans any explanation, barring a obscure plea that the defendant is a public authority and has cater to more official work and on account of spread of covid-19 and sudden lock-down, they were unable to approach the Court.

The application was strongly opposed by the plaintiff by filing his say wherein, he questioned the hazy and enigmatic explanation offered by the defendant.

7. The Roznama of the proceedings before the learned Judge is on record and on its perusal, it can be seen that on 04.09.2021, the learned Judge has heard the arguments of the plaintiff and on 09.10.2021, the application filed by defendant No.2 (exhibit-37) came to be rejected. The case was thereafter, scheduled for judgment on 16.10.2021, but for some unavoidable reasons, which could be manifestly read in the order, the judgment could not be pronounced.

8. In the backdrop of the aforesaid chronology, while determining the application exhibit-38, the learned Judge has recorded that the application when perused, only disclosed the covid pandemic as the main reason for setting aside the ex-parte order. By recording that various SOPs were issued for governing the functioning of courts and though court functioning was restricted, the doors of the courts were not shut, the learned Judge rejected the application. It is also recorded that the suit was fixed for judgment after ex-parte hearing and he ought to have pronounced the judgment, but for the Presiding Officer being on leave for three days and further 16.10.2021 being the holiday, the judgment was not delivered. Recording that the matter was closed for judgment and even no sufficient reasons are cited, which would justify the condonation of delay and setting aside ex-parte order, the application exhibit-38 is rejected.

9. I fully concur with the reasons assigned in the impugned

order. The petitioner being the public body cannot take benefit of it being shouldered with immense responsibility, nor it is entitled to plead a specious claim that the functioning of courts was affected by covid-19 pandemic. Though it is true that on account of the lock-down being imposed w.e.f. 21.03.2020, the highest court of this country was required to take cognizance of the inconvenience being caused to the litigants and advocates and it has extended the period of limitation in filing the claims as well as written statement. However, after the functioning of the courts resumed, the explanation that the delay ought to have been condoned, cannot be accepted. After the court resumed it's normal functioning, the petitioner woke up out of deep slumber and brought an application on 20.10.2021, which is again worded very vaguely. The settled proposition of law is that the delay whatsoever can be condoned provided the Court is satisfied that it is bonafide and proper explanation is offered while seeking it's condonation. On perusal of the application exhibit-38, both these factors are conspicuously absent; neither the delay is explained nor bonafides are evident. I do not find any fault with the impugned order, which necessarily deserves to be upheld.

As the consequence of the above, this Writ Petition is liable to be dismissed and is, accordingly, dismissed.