

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14437 OF 2022

Punjaram Jagannath Memane .. Petitioner
 Versus
 Jagannath Pundlik Memane and Ors. .. Respondents

-
- Mr. Vaibhav D. Kadam for Petitioner
 - None for Respondents

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 29, 2022.

P.C.:

1. Heard learned Advocate for Petitioner.
2. Perused the impugned order dated 11.10.2021 passed below Exhibit-53 by the learned Trial Court.
3. Perusal of the order clearly records that Petitioner was given two specific chances to lead his evidence. In the first instance he did not adhere to the opportunity and his evidence was closed. He filed application under Exhibit-50 for giving him an opportunity which was allowed by the Trial Court. Despite the opportunity being given to the Petitioner until 04.01.2021, Petitioner did not file any evidence. Hence the Trial Court was compelled to pass the order of closure of his evidence. After closer of evidence on 04.01.2021, Petitioner approached the Trial Court on 11.10.2021 i.e. after a period of 9 months to set aside the said order and to allow him to lead his evidence.

4. Considering the aforesaid timeline and the negligent conduct of the Petitioner, the Trial Court passed the order dated 29.11.2021 which is impugned in the present Writ Petition. It is seen that present Petition has been filed on 17.03.2022 after a delay of almost 5 months, which once again exhibits the negligent conduct of the Petitioner.

5. Learned Advocate for Petitioner submitted that the reason attributable to the delay on behalf of Petitioner to approach the Trial Court was due to Covid-19 pandemic. It is seen that without specifying and justifying the cause for delay many litigants are adopting the ground of Covid-19 pandemic for seeking orders of the Court. The present case is one of them. In the Petition there is no specific timeline and/or averment with respect to the dates on which Covid-19 pandemic lockdown had affected the Petitioner, the reasons which are mentioned are general and vague and therefore insufficient.

6. Learned Advocate for Petitioner submitted that as on date the Trial Court has not commenced with the examination of the Defendant. Hence in the interest of justice and to have proper adjudication by the Trial Court and in view of the Trial Court having earlier granted an opportunity to Petitioner to lead evidence, Petitioner is permitted to lead evidence for one last time.

7. Be that as it may, considering that in the past the Trial Court had given an opportunity to the Petitioner, I am inclined to give one more opportunity to the Petitioner to lead his evidence, subject to payment

of cost of Rs.25,000/- to the Kirtikar Law Library, High Court, Mumbai receipt of which shall be produced on the record before the Trial Court.

8. Learned Advocate for Petitioner submitted that the Petitioner is ready and willing to pay the cost within a period of two days from today.

9. Subject to payment costs and receipt to be produced before the Trial Court, Petitioner shall appear before the Trial Court on the next date of hearing i.e. 05.12.2022 and revive his application.

10. If the costs are paid, the impugned Order dated 29.11.2021 shall stand set aside and Petitioner shall be given an opportunity to complete his evidence by the Trial Court.

11. Writ Petition stands disposed of with the above direction.

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
Date:
2022.11.30
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[MILIND N. JADHAV, J.]