

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 4016 OF 2021

Chandrashekhar s/o Shambhurao Godgil vs. Chitra w/o Prithviraj Toor

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. P. A. Teni, Advocate for the petitioner.
Mr. M. R. Johrapurkar, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 11/04/2022

By this writ petition, the petitioner has challenged order dated 14/09/2021, passed by the Competent Authority, whereby an application filed at Exh.D-9 on behalf of the petitioner i.e. the original respondent for appointment of Court Commissioner for examining the petitioner as witness, has been rejected.

2. In the present matter, the proceeding pending before the Competent Authority pertains to fixation of fair rent wherein the petitioner is the tenant. The proceeding was initiated way back in the year 1995, and it is still pending before the original Authority.

3. In the said proceeding, on 04/09/2021, the petitioner filed the aforesaid application for appointment of Court Commissioner for recording of evidence. The same was opposed on behalf of the respondent. The Competent Authority rejected the application by adverting to the medical certificate upon which the petitioner placed reliance. It was recorded that the petitioner was advised bed rest from 11/09/2021 to 30/09/2021 and on this basis, it was directed that the petitioner could very well appear before the Competent Authority after 30/09/2021, and the date of 06/10/2021 was given.

4. While issuing notice, this Court granted ad-interim stay of the impugned order. It is an admitted position that after this Court granted stay of the impugned order, there has not been any progress in the pending proceeding.

5. Mr. Teni, learned counsel appearing for the petitioner, submitted that even though the medical certificate placed on record pertained to a particular period of time, the petitioner is a 82 years old person and due to general health issues, as well as the fact that the petitioner suffered from COVID-19 virus for which he was hospitalized, he was finding it difficult to travel from Akola to Nagpur. On this

basis, it was submitted that the Competent Authority ought to have taken a realistic view in the matter and the application ought to have been allowed.

6. Mr.Johrapurkar, learned counsel appearing for the respondent vehemently opposed the contention raised on behalf of the petitioner. He submitted that a perusal of the record would show that number of applications for adjournment were filed on behalf of the petitioner, even at the stage of cross-examination of the witnesses of the respondent. It was submitted that the approach of the petitioner demonstrates that he desires to delay the proceedings as much as possible and that therefore, the impugned order does not deserve interference.

7. This Court has considered the material on record. The documents placed on record indeed show that adjournments after adjournments have been sought on behalf of the petitioner in the proceedings before the Competent Authority. The proceedings are pending since the year 1995-96. It is also found that on various dates of listing, adjournments were sought either for the reason that the counsel was awaiting instructions from the petitioner or that the petitioner being an old aged person, was finding it difficult to travel to Nagpur.

Therefore, there is substance in the contention raised on behalf of the respondent that several attempts have been made on behalf of the petitioner only to delay the proceeding.

8. Yet, this Court cannot lose sight of the fact that the petitioner is a 82 years old person. At this age, medical and health issues are not out of the ordinary and it can be understood that if the petitioner had indeed suffered from COVID-19 virus for which he was hospitalized, he might be finding it difficult to travel to Nagpur for pursuing the matter or for recording of evidence. In such a situation, although medical certificate on record did indicate rest advised to the petitioner for a specific period of time, considering the age of the petitioner, the Competent Authority could have allowed the application, only to facilitate expeditious disposal of the pending proceeding.

9. Therefore, this Court is inclined to allow the writ petition. But, at the same time, appropriate directions need to be issued to the Competent Authority to ensure that the pending proceedings are disposed of at the earliest. The parties also need to co-operate with the Competent Authority for early disposal of the proceeding.

10. In view of the above, the writ petition is allowed. The impugned order is quashed and set aside and the application at Exh.D-9 is allowed.

11. Accordingly, the person named in paragraph 4 of the application is appointed as Court Commissioner to record evidence of the petitioner.

12. The petitioner shall bear all the expenses for the aforesaid exercise. The amount towards expenses of Rs.10,000/- [Rupees Ten Thousand only], shall be deposited by the petitioner before the Competent Authority within 02 weeks from today. Thereupon, the exercise of recording evidence of the petitioner through Court Commissioner shall be carried out immediately.

13. The Competent Authority is directed to expeditiously dispose of the pending proceedings and in any case within a period of **06 months** from today.

14. It is made clear that the parties shall co-operate with the Competent Authority in disposal of the proceedings within the stipulated period of 06 months from today.

15. It is also made clear that if the petitioner fails to deposit the aforesaid amount of Rs.10,000/- [Rupees Ten Thousand only] towards expenses for appointment of Court Commissioner within 02 weeks before the Competent Authority, the present order shall stand recalled and the writ petition shall stand dismissed.

JUDGE