

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7075 OF 2022

Smt. Alka Rajendra Dhirde

... Petitioner

Versus

Babasaheb Suryabhan Dhirde
and others

... Respondents

...

Mr.S.R. Sapkal – Advocate for the petitioner

Mr. R.H. Wagh– Advocate for respondent no.1.

....

CORAM : GAURI GODSE, J.

DATE : 6th January, 2023

PER COURT :

1. This petition is filed for challenging order dated 19th April, 2022 passed by the learned Joint Civil Judge, Senior Division, Newasa below Exhibit-50 in Regular Civil Suit No.472 of 2016. By this application, the petitioner prayed for condonation of delay in depositing the cost, which was a condition precedent for filing the additional written statement. By order dated 23rd February, 2021, the petitioner's application for filing additional written statement to the extent to the amendment made to the plaint was allowed subject to payment of cost of Rs.1,000/- to be paid on or before 22nd March, 2021. The petitioner was

unable to make payment of cost within the stipulated time. Hence, the petitioner on 26th November, 2021 filed an application at Exhibit-50 praying for condonation of delay for payment of cost. Petitioner contended that she is a poor agriculturist and due to restrictions during covid pandemic, she was unable to make payment of cost within the stipulated time.

2. The respondent no.1/plaintiff opposed the said application by filing his say and contended that the application filed by the petitioner was false, and that in view of the SOP the court proceeding had started, however, the petitioner failed to take steps to make the payment of cost. He submits that the petitioner is trying to delay the proceedings, hence the Petition be dismissed.
3. Perused the entire record of the writ petition. The learned Judge has rejected the application on the ground that since the petitioner failed to comply with the condition within a stipulated time, the application filed by the petitioner cannot be allowed. I do not find that the learned Judge has given any reasons for not accepting the grounds raised by the petitioner for condonation of delay to make payment of cost. There is nothing produced before me to show that in view of the delay that has occurred in

payment of cost, there is any benefit and/or right occurred in favour of the plaintiff/respondent no.1. I am informed that the suit has not proceeded for the purpose of recording evidence after the order allowing the petitioner to file additional written statement on payment of cost. In such circumstances, there will be no prejudice caused to the respondent no.1/plaintiff, if the petitioner is allowed to make payment of cost and allowed to file the additional written statement. The fact cannot be ignored that the additional written statement was allowed to be filed only to the extent of the amendment made to the plaint. In such situation, serious prejudice will be caused to the petitioner, if her additional written statement is not allowed to be filed.

4. In view of the aforesaid reasons, I find it appropriate to extend the time for making payment of cost as per order dated 23rd February, 2021 and allow the petitioner to file her additional written statement.

5. Hence, following order is passed :-

(i) Order dated 19.04.2022 passed by Joint Civil Judge, Senior Division, Newasa below Exhibit-50 in Regular Civil Suit No.472/2016 is quashed and set aside.

(ii) The application of the petitioner at Exhibit-50 in Regular Civil Suit

No.472/2016 is allowed on condition that the petitioner will deposit the amount of cost of Rs.1,000/- in the trial court within four weeks from today.

(iii) On payment of cost, the application at Exhibit-50 will stand allowed and the petitioner's additional written statement will be taken on record.

6. Writ Petition is allowed in the above terms.

[GAURI GODSE, J.]