

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7174 OF 2022

Dr. Sow. Mamata w/o Mahendra Kabra

...Petitioner

VERSUS

Manisha w/o Nitin Kabra @ Manish Babulalji
Mantri & Others

...Respondents

.....

Mr. Umesh S. Mote, Advocate for the petitioner.

Mr. R.R. Kazi h/f. Mr. P.R. Katneshwarkar, Advocate for
respondent No. 1.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th APRIL, 2023

ORDER :

1. Order passed by 2nd Joint Civil Judge, Senior Division, Jalgaon, below Exhibit-18 in Civil Miscellaneous Application No. 248 of 2020 is challenged in the present petition.

2. Respondent No. 1 filed Civil Miscellaneous Application No. 248 of 2020 under Order 39 Rule 2A of Code of Civil Procedure, claiming breach of injunction order on the part of petitioner. Notice of said application was served on the petitioner on 12.01.2021, but the copies of documents filed with application Exhibit-1 were supplied to her on 22.06.2021. Since,

petitioner failed to file say, no say order was passed against the petitioner by the Trial Court on 10.08.2021. By application Exhibit-18, petitioner prayed for setting aside the order of no say passed against the petitioner and to allow her to file say. This application is rejected. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for the respondents. Perused the grounds in the writ petition, annexures thereto and the impugned order.

4. The approach of the Trial Court in rejecting application Exhibit-18 is hyper-technical. This is not a suit but civil miscellaneous application filed under Order 39 Rule 2A of CPC. Though, it is a fact that the petitioner has failed to submit say within time, but in keeping with the principles of natural justice and with a view to give petitioner a reasonable and fair opportunity to contest the matter on merits, the Trial Court ought to have allowed the application, may be by imposing costs. Since, the impugned order deprives the petitioner opportunity to contest the matter on merits and put up her defence, the impugned order cannot be sustained.

5. Learned advocate for the respondents strenuously opposed the petition contending that the petitioner was prosecuting the other proceeding during this period and she has belatedly approached the Trial Court by filing said application.

6. Since, this Court has come to a conclusion that the impugned order cannot be sustained, for lack of due diligence the respondent No. 1 can be adequately compensated.

7. For the aforesaid reasons, writ petition is allowed.

8. The impugned order dated 24.01.2022, passed below Exhibit-18 in Civil Miscellaneous Application No. 248/2020 and no stay order dated 10.08.2021 is hereby quashed and set aside.

9. Application Exhibit-18 is allowed, subject to petitioner paying costs of Rs. 5,000/- to the respondent No. 1 in the Trial Court within four weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]