

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10107 OF 2022

Bhujang Gundu Shetty

Petitioner

Versus

Kadappa Kondiba Gade

Respondent

Mr. Shaikh Shoyab Modh Israil, Advocate for the petitioner.
Mr. S.B. Choudhari, Advocate for the respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th JULY, 2023

ORDER :

1. Leave to correct prayer clause and cause title.
Amendment to be carried out forthwith.

2. By this petition filed under Article 227 of the Constitution of India, petitioner has challenged the order passed by learned 2nd Joint Civil Judge, Senior Division, Osmanabad below Exhibit-39 in Regular Civil Suit No. 220/2018.

3. Respondent/original plaintiff has filed suit for recovery of an amount of Rs. 3,00,000/-. Petitioner/original defendant resisted the suit by filing written statement. Plaintiff led his evidence by filing evidence affidavit. Since, the defendant

failed to cross examine the plaintiff, no cross order was passed against the defendant. By filing application Exhibit-34, petitioner requested to set aside the said order, which was allowed by order dated 04.03.2020, subject to payment of cost of Rs. 200/- to be paid to the plaintiff on or before next date. The petitioner failed to deposit the cost on the next date. The petitioner thereafter filed application Exhibit-39 again requesting for setting aside of no cross order. Said application is rejected by the impugned order.

4. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the memo writ petition, annexures thereto and the impugned order.

5. Admittedly, the petitioner has failed to deposit cost within time stipulated by the Trial Court. The petitioner has given reason that he had undergone major surgery on his leg at Karnataka and his daughter was also operated at Karnataka. The Trial Court has not accepted the reasons assigned by the petitioner on the ground that the documents which the petitioner has produced are not of relevant period and application is filed only to prolong the proceeding.

6. Taking into consideration the peculiar facts of the present case and as the suit is for recovery of amount of Rs. 3,00,000/-, reasonable and fair opportunity needs to be given to the petitioner to contest the suit on merits. The impugned order, therefore, cannot be sustained. Considering the fact that the suit was at the stage of final argument, direction needs to be given to the Trial Court to expedite the hearing of the suit. Hence, the following order:

ORDER

- I] Writ petition is allowed.
- II] Impugned order dated 30.08.2022, passed by learned 2nd Joint Civil Judge, Senior Division, Osmanabad below Exhibit-39 in Regular Civil Suit No. 220/2018 is hereby quashed and set aside.
- III] Application Exhibit-39 is allowed, subject to payment of costs of Rs. 10,000/- to the plaintiff in the Trial Court.
- IV) Hearing of the suit is expedited. The Trial Court shall decide the suit within three months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]