

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5634 OF 2022

Chandrakant Prabhakar Bagal

.. Petitioner

Versus

Pandurangh Sahakari Sakhar Karkhana Ltd.

Through Account Clerk

Padmakar S. Pathak

.. Respondent

-
- Mr. Purushottam G. Chavan, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 04, 2023.

P.C.:

- 1.** Heard Mr. Chavan, learned Advocate for the Petitioner.
- 2.** Perused the impugned order which is a handwritten one line order on page No.21 (Exhibit-D) to the Petition which reads thus:-

“As costs is not paid within time, the Application Exhibit-81 is rejected.....”

- 3.** Mr. Chavan would submit that by order dated 25.06.2020 passed below Exhibit-81, Defendant (Petitioner herein) had filed an Application for setting aside ‘evidence closed’ order passed by the learned Trial Court. After considering the Application and the grievance expressed by Defendant the learned Trial Court was pleased to allow the Application below Exhibit-81 subject to payment of costs of Rs.5,000/- to be paid to the Plaintiff (Respondent herein).

4. He submitted that the said order was passed during the height of the first Covid wave/period and thereafter due the imminent lockdown imposed by the Covid restrictions and Petitioners residence/location having being severely affected, it was not possible for the Petitioner to comply with the said order. The explanation has been given by Petitioner in paragraph No.5 of the Writ Petition which reads thus:-

*“5. That the Petitioner states that it is pertinent to note that during the interregnums, the area of Petitioner’s location was severely because of pandemic COVID-19. In the meantime, Petitioner also unwell and many times he has to go to outstation hospital for medical treatment. Due to COVID-19 SOP, movements in Malshiras and Pandharpur Taluka are restricted. Hence Petitioner and his advocate could not follow up the track of the present suit proceedings. Petitioner thereafter appeared before the learned Judge of Trial Court and filed Application dated 22-03-2021 at Exhibit 85 in the said suit praying for deposit of Cost of Rs. 5000/- in compliance of Order passed below Exhibit 81. Learned Judge of Trial Court instead of considering the propriety, on the same day passed order below Exhibit 85 and rejected the same holding that, “As cost is not paid within time Application Ex 85 is rejected-----”. Hereto annexed and marked as **EXHIBID-D** Collectively is the copy of Application at Exhibit 85 and order dated 22-03-2021 passed below Exhibit 85 in Special Civil Suit No. 20 of 2011.”*

5. Considering that the learned Trial Court has elaborately considered the Application below Exhibit-81 and the overall circumstances and has come to the conclusion that rights of the Defendant are involved in the suit and for just decision of the suit on merits, one fair opportunity needs to be given to the Defendant subject to costs, I am inclined to allow the present Writ Petition subject to

payment of costs.

6. Hence, the impugned order passed by the learned Trial court at Exhibit “D” to the Petition stands quashed and set aside. The order dated 25.06.2020 stands revived subject to Petitioner paying costs of Rs.5,000/- to be paid by Petitioner to Kirtikar Law Library, High Court, Mumbai within two weeks. Petitioner undertakes to comply with the order dated 25.6.2020 within a period of two weeks from today. Subject to the above compliance Writ Petition is allowed in the above terms.

[MILIND N. JADHAV, J.]