

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7723 OF 2023

Shri Vitthal Shetkari Sahakar
Sutgirani Maryadit Pandharpur Petitioner
Vs.

Ajinath Bapu Nimbalkar
since deceased through Lrs.
Suman Ajinath Nimbalkar and ors Respondents

Mr. Ajay Joshi for the Petitioner.
None for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 27th JUNE 2023.

P. C.

1. Heard learned counsel for the petitioner.
2. The challenge in the Petition is to the order dated 7 September 2022 rejecting the petitioners application for setting aside order dated 20 July 2022 passed Joint Civil Judge, Junior Division, Pandharpur below Exhibit I.
3. Learned counsel for the petitioner submits that by order dated 15 November 2019 below Exh.115, the petitioner's application to set aside order dated 16 October 2018 and to permit him to adduce his evidence was allowed subject to payment of costs. The said order reads as under;

“1. The instant application at Exh.115 is allowed in the interest of justice subject to cost of Rs.1,000/- to paid to the defendant no.5 and 18 jointly and Rs.1,000/- to defendant

no.17 and 20 jointly.

2. The order dated 16.10.2018 passed on Exh.86 is hereby set aside after depositing the cost amount.

3. The plaintiff to remain present on next date to take cross-examination from defendants without fail.

4. The application is disposed of accordingly.”

4. Learned counsel for the petitioner would further submit that the costs as directed could not be paid for the reason that from December 2019 to January 2021, the advocate for the petitioner was hospitalized and thereafter the advocate expired on 21 January 2021. He would further submit that due to Covid-19 the Courts were not functioning and as such the application to recall the order dated 28 June 2022 came to be filed after change of advocate on 21 July 2022.

5. Considered the submission and perused the impugned order.

6. The trial Court had permitted the petitioner to adduce the evidence subject to payment of costs. It is required to be noted that the petitioner is not individual but is an entity known as Shri Vitthal Shetkari Sahakar Sutgirani Maryadit Pandharpur. The only reason given in the application that due to inadvertence the costs could not be paid. The corporate entity cannot be heard to submit that they do not have wherewithal to change its advocate upon its previous advocate being hospitalized and to comply with the order passed by the trial Court. The reason put forward about Covid-19 also cannot be believed, for the reason that the entire functioning of the Court had not come to a stand still during the period 2020-22. The application in question has been filed in July 2022. Although,

due to Covid-19 pandemic the functioning of the Court was affected but it cannot be said that the Courts were completely shut down and as such the application could not have been filed. It is also required to be noted that in the prior action in the year 2018 the affidavit of evidence came to be discarded as neither the plaintiff nor his advocate was present. The application filed to set aside the said order came to be allowed. It was then expected that the petitioner would be vigilant in the matter. However, the petitioner neither complied with the order of payment of costs nor any application was moved for extension of time for depositing the costs.

7. Considering the conduct of the petitioner, I do not find any reason to interfere with impugned order dated 7 September 2022, in view of the fact that RCS No.247 of 2007 was instituted in the year 2007 and is pending since then. Writ Petition stands dismissed.

SHARMILA U. DESHMUKH, J.