



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3159 OF 2016

Janardhan Narayan Khamkar

....Petitioner

V/S

Vaman Devchand Nikam & Anr.

....Respondents

...

None for the Petitioner.

Mr. Rajesh S. Datar for Respondent Nos.1 and 2.

...

CORAM: SANDEEP V. MARNE, J.

DATE : AUGUST 18, 2023.

P.C.:

1. By this Petition Petitioner challenges order dated 16 January 2016 passed by the 3rd Joint Civil Judge Junior Division, Ulhasnagar, rejecting Petitioner-Defendant's application for setting aside 'No W.S.' order.

2. Plaintiffs have filed Regular Civil Suit No.136 of 2015 inter alia for recovery of possession of suit property. Petitioner-Defendant was served with suit summons on 30 April 2015. Petitioner-Defendant failed to file Written Statement. The Court therefore proceeded to pass 'No WS' order against Petitioner-Defendant on 5 August 2015.

3 The Petitioner-Defendant thereafter filed application at Exhibit 28 on 4 January 2016 for setting aside 'No W.S.' order. The Trial Court has proceeded to reject the application by impugned order dated 16 January 2016.

4 When the present Petition came up before this Court on 7 April 2016, following order was passed:

"1. Heard Mr. Vivek Solunke, learned counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 16.1.2016 passed by the learned 3 Jt. Civil Judge, Jr. Dn.. Ulhasnagar, below Exhibit 28 in Regular Civil Suit No. 136 of 2015. By that order, the learned trial judge rejected the application made by the petitioner; hereinafter referred to as 'defendant', for setting aside 'No W.S.' order.

3. Mr. Solunke submits that there is delay of 5 months in filing written statement. He further submits that the written statement of the petitioner is ready and if the impugned order is set aside, within two weeks he will place the written statement on record. He further submits that within two weeks from today, the petitioner will deposit Rs. 15,000/- in this Court.

4. In view thereof, issue notice to the respondents, returnable on 27.4.2016. Parties are put to notice that subject to the time constraint and convenience of the Court, Petition will be disposed of finally at the stage of admission. Notice shall further indicate that despite service, if the respondents fail to appear, the Court will proceed to decide the petition on its own merits.

5. The petitioner shall deposit Rs.15,000/- in this Court within two weeks from today. In the meantime, there shall be ad- interim order in terms of prayer clause (b).

6. It is expressly made clear that if the petitioner does not deposit Rs. 15000/- in this Court within the stipulated period, ad-

interim order shall stand vacated without further reference to the Court.”

5 In pursuance of the order dated 7 April 2016, Petitioner-Defendant has deposited amount of Rs.15,000/- in this Court on 13 April 2016. The present Petition is pending since the year 2016 and on account of *ad-interim* order granted by this Court on 7 April 2016, the proceedings of Regular Civil Suit No.136 of 2015 have been stayed.

6 This Court has already indicated in order dated 7 April 2016 that the delay in filing Written Statement was only of five months and that the Petitioner-Defendant was ready with his Written Statement to be filed in the Court.

7 Mr. Datar, the learned Counsel appearing for Respondent would oppose the Petition and support the order passed by the Trial Court.

8 Considering the fact that the delay in filing Written Statement was only of five months as well as consistent view taken by the Apex Court, the time limit laid down, Order VIII Rule 1 of the Code of Civil Procedure is directory. Reference in this regard can be made to the judgment in *Kailash vs. Nanhku* (2005) 4 SCC 480. It is also required to be taken into consideration that the proceedings in the suit have been stayed for the last seven long years. In view of these facts and circumstances, I am of

the view that Petitioner-Defendant can be granted an opportunity to file Written Statement by imposing costs of Rs.15,000/- which are already deposited in this Court.

9 Accordingly, the Writ Petition succeeds. The order dated 16 January 2016 passed by the Trial Court is set aside. Petitioner-Defendant is permitted to file Written Statement in Regular Civil Suit No.136 of 2015. The same be filed on or before 30 September 2023. Costs of Rs.15,000/- are imposed on the Petitioner-Defendant. Respondents are permitted to withdraw the costs of Rs.15,000/- already deposited by the Petitioner-Defendant from this Court. The Writ Petition is accordingly disposed of.

(SANDEEP V. MARNE, J.)