

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12564 OF 2022

Baloor Yogesh Bangera

...Petitioner.

Versus

Hitesh A. Kuvelkar

..Respondent.

*Mr. S.S. Patwardhan i/b Ms. Mrinal A. Shelar for the petitioner.
Mr. Hitesh A. Kuvelkar, respondent-in-person.*

Coram : Sharmila U. Deshmukh, J.

Date : July 6, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 7th April 2022 passed by the trial Court in Notice of Motion No.571 of 2022, rejecting the petitioner's application seeking recall of 4 orders, viz., the order dated 25th April 2019 closing the evidence of plaintiff without his cross-examination; the order dated 11th July 2019 closing the evidence of plaintiff's witness no.2 without cross-examination; the order dated 24th January 2020 forfeiting the right of petitioner-defendant to lead evidence in the suit; and the order dated 25th February 2020 closing the evidence of plaintiff's witness no.3 without

the cross-examination.

3. For the sake of convenience, parties are referred to by their status before the trial Court. The plaintiff has filed the suit for recovery of money, compensation and injunction. It is not disputed that there was simultaneous proceedings under section 138 of the Negotiable Instruments Act, 1881, which went upto the Apex Court and pursuant to the directions of Apex Court, a sum of Rs.10 lakh was paid to the plaintiff. Since the year 2015, the defendant did not attend the proceedings before the trial Court which led to passing of the orders as indicated above forfeiting the defendant's rights to cross-examine the plaintiff and plaintiff's witnesses as well as forfeiting the defendant's right to lead evidence.

4. Learned counsel for the petitioner has invited the attention of this Court to the application seeking to set aside the orders and would submit that pursuant to the order of the Apex Court, a sum of Rs.10 lakh is already deposited which shows the *bona fide* of the petitioner to prosecute the proceedings. He would further submit that due to his financial constraints, the advocate appearing on behalf of the petitioner in the trial Court was not paid his professional fees and it was only recently that upon enquiry with the said advocate, the

petitioner realised that the advocate was not appearing in the matter. He would further submit that it is only upon change of advocate and upon the inspection of papers, the petitioner acquired knowledge of the orders passed by the trial Court. He would further submit that since March 2020, due to Covid-19 pandemic, application could not be moved for setting aside the orders and the application has been moved in the year 2021 which has been rejected.

5. Considered the submissions of learned counsel for the petitioner.

6. The grounds on which the indulgence is sought are, first that the petitioner was not aware that his advocate was not attending the matter before the trial Court; second is the covid-19 pandemic; and third is the advanced age of petitioner. As far as the first ground is concerned, the claim of petitioner is that he became aware of the orders only recently he enquired with his advocate as regards the status of his matter. In other words, the petitioner seeks to lay the blame squarely on the shoulders of his advocate. The affidavit in support of application does not disclose as to when the petitioner has contacted his advocate and all that it says is that only recently he enquired with his previous advocate. This shows the negligent attitude on the part of petitioner. This is not expected of the litigant,

who on one hand prosecutes the proceedings right upto the Supreme Court and on the other hand, has not been diligent while prosecuting the proceedings before the civil Court and is placing the blame on advocate, without mentioning any details as to when he contacted the advocate. Law comes to the aid of litigant who is vigilant and is diligent in protecting his rights and not to the one who sleeps over his right and thereafter seeks to blame his advocate. It was expected of the petitioner who, as is evident, is clearly aware of the legal procedure, to be in touch with his advocate and be informed about the proceedings which are pending. That being so, in my opinion, no indulgence is required to be shown to such litigant.

7. As far as the ground of Covid-19 pandemic is concerned, it begs of no debate that functioning of courts was not completely closed and nothing stopped the petitioner from applying at the relevant time for setting aside the orders. The orders appear to have been passed since 2019 and it is only in the year 2021 that the application for setting aside the orders is filed. Even if the reason of Covid-19 pandemic is accepted, considering the negligent attitude of petitioner, no relief can be granted to the petitioner. I am fortified in my view by reason of the fact that since 2016, the petitioner is not attending the matter and affidavit in support of application makes a

specific averment that he was duly prosecuting another matter before this Court as well as the Supreme Court till July, 2020. That being so, no case for indulgence is made out particularly when stage of the suit is now for final arguments. In event any relief is granted to a negligent litigant, the same would result in grave injustice to the plaintiff who has been prosecuting the proceedings diligently since 2014. It is not possible for this Court to come to the aid of a negligent litigant and to turn the clock back so as to relegate the suit to the stage of cross-examination of plaintiff when thereafter further witnesses have been examined and the suit is fixed for final arguments, i.e., on the verge of completion.

8. In that view of the matter, writ petition being devoid of merit, stands dismissed.

[Sharmila U. Deshmukh, J.]