

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 4326 of 2022

Navdurga Utsav Sanstrikrutik Krida Mandal

Versus

Hussain Amin Zamin Amin

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Zeeshan Haq, Advocate for the petitioner.

Shri P.N.Kothari, Advocate for the sole-respondent.

CORAM : ANIL S. KILOR, J.

DATED : 13th MARCH, 2023.

Heard.

2. By way of present writ petition, a challenge is raised to the order dated 10th March, 2022 passed by 18th Joint Civil Judge, Senior Division, Nagpur in Regular Civil Suit no. 849 of 2015, rejecting applications for setting aside no cross orders.

3. Learned counsel for the petitioner submits that though the petitioner cannot dispute that on his part there was some negligence. However, considering the dispute involved in the present matter and the fact that a great prejudice would be caused to the petitioner, if application exhibit 64 is not allowed, this Court may take a lenient view and allow the application exhibit 64

subject to costs of Rs.15,000/- which has already been deposited by the petitioner to show his *bona fide*.

4. On the other hand, Shri Kothari, learned counsel for the respondent strongly opposed the application and submits that in the present matter it is not only negligence but the conduct of the petitioner needs to be seen. It is submitted that the petitioner tried to protract the matter by filing frivolous applications and also not complying the orders of the trial Court. He, therefore, submits that the present petition needs to be dismissed.

5. In the light of the rival contentions of the parties, I have perused the record and the impugned order.

6. The respondent in the present petition is the plaintiff who filed a suit for declaration, permanent and mandatory injunction for removal of alleged encroachment on the suit land and thereby he sought a decree for removal of Kaccha structure along with idol installed.

7. The petitioner appeared in the said matter and filed the written statement. Thereupon, the issues were framed at exhibit 20 and the evidence of the plaintiff was recorded. Thereupon, the matter was kept for cross-examination of the defendants on 28th

November, 2016 and lastly on 20th December, 2016. As the defendants failed to cross-examine the witness of the plaintiff, no cross order was passed on 20th December, 2016. Thereafter, on 16th January, 2017, the application for setting aside the order of no cross was filed and it was allowed vide order dated 27th March, 2019 subject to payment of costs of Rs.3000 by 16th April, 2019.

8. Admittedly, the petitioner failed to deposit the said costs on or before 16th April, 2019.

9. On 20th December, 2019 after eight months, the petitioner filed an application for rejection of plaint, which was rejected.

10. Thereafter, another application for rejection of plaint was filed on different grounds. The same was also rejected.

11. Thereafter, again on 25th February, 2021 and on 5th August, 2021 orders of no cross were passed and thereafter on 25th January, 2022 an application exhibit 64 was moved for setting aside the four orders dated 20th December, 2016, 5th August, 2021, 27th March, 2019 and 2nd December, 2021.

12. The learned trial Court while rejecting the application has held thus:

13. In view of the rules cited in authorities, the defendant has been given various opportunities since the inception of the suit. From the first instance itself,

when the matter was proceeded without the written statement, the defendant has shown lack of due diligence. Thereafter, also when the issues were framed and the matter was posted for cross-examination of plaintiff and his witness without cross examining the witness, the plaintiff has preferred application of rejection of plaint at first instance, which was rejected. Immediately on second instance, again application for rejection of plaint was preferred by another grounds. This application was also rejected. Subsequent, thereto, the plaintiff has closed his evidence and matter was posted for evidence of defendant. At this moment also, without giving the evidence in defence has preferred several adjournment applications. Ultimately, the present application was preferred. As per the orders the defendant was directed to furnish the medical papers which were not filed on record as the reasons itself appears to be false for grant of adjournment. This itself shows that the defendant is negligent and also does not obey the orders of this Court. As far as Covid period is concerned, that can be exempted. But, subsequent thereto also the defendant has not shown due diligence to the fixed dates and had only sought adjournment. On many dates cost was imposed and conditional adjournments was granted. The defendant has also not obeyed the orders and the cost which was imposed on Exh.39 has not been paid after a period of 3 years. This itself shows that defendant has shown disrespect to the orders passed on various occasions. Defendant is not vigilant or is not taking steps as provided in amended Civil Procedure Code. Hence, grant of further time and allowing the application will not amount to delay in grant of justice. The conduct of the plaintiff shows that, he does not have due diligence and has shown his negligence on many occasions. In view of these observations and rules cited in various

authorities and looking to the age of the matter, the application deserves to be rejected. Hence, I pass following order.

1. Application is rejected.

13. Thus, considering the negligence on the part of the petitioner and the conduct of the petitioner whereby he tried to protract the matter by filing frivolous applications namely rejection of plaint on two occasions coupled with the inordinate delay in raising a grievance against the order dated 20th December, 2016, I am of the opinion that no ground is made out to interfere. Accordingly, the writ petition is dismissed.

14. At this stage, learned counsel for the petitioner is praying for to continue for five weeks the stay granted by this Court vide order dated 16th September, 2022.

15. Shri Kothari, learned counsel for the respondent strongly opposed the said prayer.

16. Considering the fact that the stay was in operation from 16th September, 2022 for almost more than five months, I am of the opinion that no prejudice would be caused if it will be continued for five weeks.

17. It is made clear that for no reason, the same will be extended and on completion of five weeks from today, the stay shall stand automatically vacated.

18. The costs of Rs.15,000/- deposited by the petitioner to show his *bona fide* shall be transferred to the account of High Court Bar Association for purchase of scanning machine.

[ANIL S. KILOR, J.]

SACHINDANAND
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