

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

WRIT PETITION NO. 2984 OF 2023

Jeevan Vihar Cooperative Housing Society Ltd and anr__ Vs. __ Muskan Harvinder
Nayyar and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. Ketki A. Jaltare, Advocate for the petitioners.

CORAM : AVINASH G. GHAROTE, J.
DATE : 03/05/2023

1] The petition challenges the order dated 26.4.2023 passed by the learned trial Court by which the application below Exh.46 for setting aside the 'no WS' order dated 22.2.23 has been set aside and the respondents have been permitted to file their WS, subject to the cost of Rs. 500/-.

2] It is contended that an additional application was required to be filed seeking permission of the Court to place the WS on record. It is also contended that since the application below Exh.46 was accompanied with the WS, though the same was not pressed by the defendants and subsequently a fresh WS came to be filed, the same could not have been done, as there is no provision

for filing of second WS. Reliance is also placed upon proviso to Order 8 Rule 1 of CPC.

3] In a suit for specific performance filed by the present petitioner, a 'no WS' order came to be passed on 22.2.2023 against the defendant nos. 1 & 3. An application for setting aside the 'no WS' order came to be filed below Exh.46 on 28.3.2023 (pg. 65) which is claimed to have been accompanied with a WS of defendant nos. 1 & 3. Before the application at Exh.46 came to be decided, the said WS was not pressed. Prior to the 'no WS' order being set aside by the impugned order dated 26.4.2023, a fresh WS came to be filed on record. It is necessary to note that there is no mandate to the plea that consequent to the setting aside of the 'no WS' order, there has to be an additional application seeking permission to file WS on record. The very effect of setting aside the 'no WS' order would be to relegate the parties to the position as it was earlier in point of time and therefore there is no question of filing an application for taking the WS on record. That apart, since the WS which was accompanied with Exh.46 was not pressed even before Exh.46 came to be decided, it cannot be said to have acquired the status of the WS of defendant Nos. 1 & 3, so as to claim that a second WS could not have been filed.

4] That being the position, I am not inclined to interfere in the impugned order. The petition is without any merits. The same is dismissed. No costs.

JUDGE

Rvjalit