



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

WRIT PETITION NO.1107/2023

Ratnakalabai Dnyaneshwarrao Rajgure and Ors. .Vs. Panchfula Damodhar
Waghmare and Ors.

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

Court's or Judge's orders

Mr. Z. Z. Haq, Advocate for petitioners.

Mr. G. K. Mundhada, Advocate for respondent Nos. 1 and 2.

CORAM : ANIL L. PANSARE, J.

DATE : SEPTEMBER 25, 2024

Heard.

The petitioner – plaintiff had filed suit for specific performance of contract, which came to be dismissed in default firstly in 2009, secondly also in 2009 and lastly in the year 2014. On the first occasion, it was restored by the Trial Court. On the second occasion, it was restored by this Court. This is the third time, the petitioner is before the Court.

Learned counsel for the petitioner submits that on the date when the order of dismissal was passed, the petitioner was not keeping well. He did not inform about his illness as also about the date to the counsel and, therefore, the counsel also failed to appear on that day.

The Trial Court, taking note of the fact that the suit has been made time bound by this Court and further that none appeared for the petitioner – original plaintiff, dismissed the suit yet again. Thereafter, the petitioner filed application with a request to recall the order. The Trial Court found that the

evidence as regards the illness of the petitioner was not placed on record. Accordingly, the impugned order is passed.

The counsel for the petitioner submits that on 10.09.2014, the order of dismissal was passed. Thereafter, the counter claim was fixed for hearing on 24.10.2014 and on that day itself, the present application was filed. Thus, according to him, the petitioner acted promptly. He further submits that the petitioner was diligently attending the proceedings but on that day i.e. on 10.09.2014, he failed to attend on the count of his illness, however, he has not placed on record the medical certificate. The counsel submits that the application was filed on oath and had the petitioner been given an opportunity, he would have filed medical certificate also. He then submits that the petitioner undertakes to attend the proceedings diligently.

As against, the counsel for respondent Nos.1 and 2 has opposed the application. He states and correctly so that there arises no question of granting liberty to the petitioner to place on record medical certificate in support of his averments inasmuch as it was his responsibility to support the application with necessary documents. Accordingly, he submits that the petition is liable to be dismissed.

Having given thoughtful consideration to the submissions, to my mind, though petitioner failed to submit medical certificate, he filed application on oath stating therein that he was not keeping well. Record further does not indicate that the petitioner was not diligent in attending the proceeding.

In the circumstances, one opportunity can be extended to the petitioner subject to heavy costs and with a rider that his failure to attend the Court as also to cooperate the Court to decide the suit within stipulated time will result into dismissal of the suit and such other order as the Trial Court may deem fit and necessary in the facts before it.

Accordingly, the writ petition is allowed. Impugned order dated 28.09.2020, passed by District Judge, Amravati in Misc. Civil Appeal No.6/2018 and order dated 24.01.2018 passed by Civil Judge Junior Division, Tiosa in R.M.J.C. No.25/2014, are quashed and set aside subject to depositing costs of Rs.50,000/- with the Trial Court within 15 working days from today, failing which the order of dismissal shall stand restored, without further reference to this Court.

If the costs are so deposited, it shall be paid to the respondents upon making an application to that effect.

The petition is disposed of in above terms. No order as to costs.

(Anil L. Pansare, J.)