



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, AT NAGPUR.**

**CIVIL APPLICATION NO.1917 OF 2024**

**IN**

**WRIT PETITION NO. 8405 OF 2019 (D)**

( Avinash s/o Shrikrishna Kamble ..vs.. Shriram Mohan Thorat (dead) through L.Rs. Chandrashekhar and others )

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

Smt. S.W. Deshpande, Advocate for the petitioner,  
Shri R.D. Wakode, Advocate for the respondents.

**CORAM : ABHAY J. MANTRI, J.**

**DATED : 03-08-2024**

The petitioner-original defendant has moved this application to seek an extension of time to deposit the costs in the trial Court.

2. Heard Smt. S.W. Deshpande learned Advocate for the petitioner and Shri. R.D. Wakode, learned Advocate for the respondents. Perused the record.

3. The petitioner, by filing Writ Petition No.8045/2019, challenged the order passed by the Civil Judge Senior Division, Amravati, below Exhibit 76 in Regular Civil Suit No.943/2012, in which his application to set aside the order of striking of defence was rejected.

4. This Court vide detailed conditional order dated 05-04-2024 permitted the petitioner to conduct the cross-examination of the witness/s, subject to deposit of costs of Rs.20,000/- in the trial Court on or before 04-05-2024. In the said order, the conduct of the

petitioner was discussed in detail in paragraphs 5 to 7; however, with a view to meet the ends of justice only, the petitioner was permitted to cross-examine the witness subject to payment of costs. Despite the said fact, neither the petitioner deposited the costs in the prescribed time in the trial Court nor conducted a cross-examination of the witness since 15/04/2017, i.e. more than “*Five years*” in more than “*Ten-years-old matter*”. It is to be noted that **thrice**, the Trial Court granted permission to conduct the cross-examination of the witness by setting aside a “*No Cross*” order, but in vain. After that, this court also gave the petitioner an opportunity, but there seemed to be no consequence. I would like to reproduce relevant paragraphs 5 to 7 of the order dated 05/04/2024 as under,

*“5. Perusal of the record reveals that since 2012, the civil suit filed by the plaintiffs-respondents for recovery of arrears of rent has been pending. Issues were framed on 04.04.2013, and an affidavit of examination in chief was filed by the plaintiff on 13.07.2016. Thereafter, on 26.08.2016, 21.09.2016, 18.01.2017, and 10.02.2017, the petitioner has filed applications for adjournment. Despite granting several opportunities, the defendant failed to conduct a cross-examination; **therefore, on 15.04.2017, a no-cross order was passed.** On 22.06.2017, the plaintiff filed evidence close pursis.*

*6. It further appears that on 20.07.2017, the defendant had moved an application for setting aside a no-cross order, which came to be allowed subject to payment of cost of Rs. 1500/-. On 02.10.2017, plaintiff No.1 died; therefore, plaintiff No. 3 filed an affidavit of evidence on 12.09.2018, and the matter was fixed for a cross-examination of plaintiff No. 3. Since the defendant failed to cross-examine plaintiff No. 3 a second time no cross-order was passed on*

16.10.2018. On 31.10.2018, the defendant filed an application for setting aside no cross order, which came to be allowed on 14.03.2019, subject to payment of a cost of Rs. 2000/-. The defendant did not deposit the cost but filed an application dated 25.04.2019 for a grant of time to deposit the cost, which was rejected. On 28.08.2019, for the third time, no cross-order was passed below Exh. 63. So again, an application for setting aside the no-cross order dated 28.08.2019 was filed on 20.09.2019, which came to be allowed subject to a cost of Rs. 2500/- with a specific direction that if cost is not paid and cross-examination is not conducted, then defence shall stand struck off, automatically. Despite specific directions and noted down the order, the order did not comply, therefore, the defence was struck off vide order dated 01.10.2019. Once again, an application for permitting to deposit of the cost of Rs. 2500/- and setting aside the order dated 01.10.2019 was filed, which came to be allowed partly permitting him to deposit of cost but the prayer for setting aside the order of striking of the defence came to be rejected.

7. Perused the impugned order. The learned judge has passed the detailed reasoned order and also noted the conduct of the defendant. No fault is found in the order. Moreover, from the record, the conduct of the defendant can be inferred, which shows that the defendant is trying to prolong the matter by moving one application after another for one reason or the other. It can be further noticed that the defendant has deliberately avoiding to proceed with the matter, which is more than 'five years old' and tried to protract the same. It is also evident that the learned trial judge has granted ample opportunities to the defendant to proceed with the matter on that ground alone, but the defendant is not entitled to the relief as claimed.

However, considering the submissions of learned counsel for the petitioner and with a view to meet the ends of justice, in my opinion, though, the defendant is not entitled to claim the relief; however, showing leniency by way of last chance, it would be appropriate to grant one more final opportunity to the petitioner/defendant to contest the matter on merit by imposing heavy costs."

5. The petitioner, by this application, is seeking an extension of time to deposit the said cost on the ground that the matter was posted before the trial Court on 29-06-2024, and therefore, the petitioner could not deposit the amount in the Court in the prescribed time. However, I do not find substance in the said contention/reason, as the order dated 05/04/2024 was passed in the open court in the presence of the learned Advocate for the petitioner/original defendant. That being so, the learned Advocate was aware of the said conditional order to comply in time. *Moreover*, the said order was communicated to the petitioner by his Advocate in the High Court in the second week of April 2024. *Besides*, the order was uploaded to the High Court Website on 12-04-2024. In addition, the writ was also sent to the trial Court on 26-04-2024. Therefore, it cannot be said that the petitioner was not aware of the conditional order. *Per contra*, it seems that the petitioner is playing tactics with the Court by adopting dilatory tactics to protract the litigation, which is more than “***Ten years old***”. The reasons stated in the application are neither *bona fide* nor convincing enough to grant leverage to the petitioner further. But the same is unpalatable and unsatisfactory.

6. Having considered the discussion above, I do not find substance in the application to recall the judgment dated 05-04-2024 to the extent of granting an extension of time to deposit the amount.

7. The application, being bereft of any merit, hence stands rejected.

8. Needless to clarify, the matter is more than '*Ten years old*'. As such, the Trial Court is directed to decide the matter expeditiously as per the litigation policy.

9. Writ be issued to the trial Court immediately.

**(ABHAY J. MANTRI, J.)**

*adgokar*