



6247-2023

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

WRIT PETITION NO. 6247 OF 2023

(Shraddha Ashish Deshbhratar Vs. Ashish Ramchandra Deshbhratar)

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

Court's or Judge's orders.

Shri M.N. Ali, Counsel for the petitioner.
Shri U.Y. Sonkusare, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
AUGUST 28, 2024

Challenge is to order dated 25/6/2022 passed by the 4th Joint Civil Judge Senior Division, Nagpur, in H.M.P. No. 386/2021, thereby rejecting the request made by the petitioner – wife to file written statement. The order, rejecting request, reads thus :

“Perused the application, say and record of the case. Heard Ld. Advocates appeared for both sides. By the application, the respondent is seeking permission to file W.S. on record. Summons served upon the respondent vide Exh. 06 on 14/01/22. This application is filed on 28/4/22 i.e. after expiry of statutory time limit. First of all contents of this application are neither supported by separate affidavit nor by solemn affirmation. Moreover, absolutely no reason has been stated as to why the respondent could not file W.S. within statutory time limit. Mere casual application has been filed with an anticipation that it will be granted as of right. In such circumstances, this application being devoid of merits stands rejected.”

2] As could be seen, the application, seeking to file written statement, is neither supported by affidavit nor is any reason given for the delay, though the delay is

trivial. The Court further notes that the application is filed as if it will be granted as of right. Thus, in a way, it is suggested that the Court is taken for granted. Accordingly, the application is rejected.

3] The learned Counsel for the petitioner submits that the petitioner is a lady and has no source of income and further that delay is only of 14 days.

4] To my mind, the question here is not of number of days of delay. The question is whether the petitioner has approached the Court with some justification for delay.

5] The petitioner appears to have filed application anticipating that it will be allowed as of right, in the sense, the petitioner did not feel it necessary either to furnish some reason for the delay and further to file affidavit in support. The Court below has, accordingly, held that the application has been filed in a most casual manner without assigning any reason for the delay. In the circumstances, I do not find any reason to interfere with the impugned order in writ jurisdiction.

6] The learned Counsel for the petitioner submits that the Court below could have imposed cost, but to proceed without written statement will cause serious prejudice to the rights of the petitioner to defend her case.

7] True it is that to not permit the petitioner to file written statement will cause serious hurdle in her defence, however, when the provisions provide for act to be done in a particular manner within stipulated time, it

carries some significance and the parties should adhere to it, else the provisions will be found only on paper without any effect. In the circumstances, the least that is expected from persons, like the petitioner, is to tender some reason in support of belated action. The casual approach has been rightly dealt with by the Court below.

8] That apart, the petitioner continued her casual approach in approaching this Court as well. The learned Counsel for the respondent has pointed out that the Writ Petition is filed after about one year and three months of passing of the impugned order. In Writ Petition also, the petitioner does not utter a word as to what prevented her from approaching this Court in time if she has to put forth a plea that non-filing of written statement will cause serious prejudice to her defence.

9] I am informed that chief-examination of the petitioner has been already recorded and is pending for cross-examination. The petition, which has been filed on 12/9/2023 has been not pressed for final disposal on urgent basis. It is only when the matter is fixed for cross-examination, the petition is sought to be listed on circulation.

10] In the circumstances, I am not inclined to interfere with the impugned order. The petition is accordingly dismissed.

(ANIL L. PANSARE, J.)