



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

952 WRIT PETITION NO. 5140 OF 2025

ISHWARI KAILAS GONDKAR
VERSUS
ANJALI BALASAHEB TAMBE AND OTHERS

...
Advocate for the Petitioner : Mr. Sandeep R. Sapkal
Advocate for Respondent 1 : Mr. A.G. Vasmatkar
...

CORAM : ARUN R. PEDNEKER, J.
Dated : October 09, 2025

PER COURT :-

1. The petitioner/defendant challenges the order dated 14.1.2025 below Exh. 68 and order dated 1.4.2025 Exh. 74 passed by the learned Civil Judge, Senior Division, Rahata.
2. The learned counsel for the petitioner submits that the plaintiff/respondent filed suit for partition and separate possession and that summons of the suit was served on the petitioner/defendant on 18.6.2024 thereafter the petitioner appeared in the suit and sought time on 29.6.2024 to engage lawyer. The learned trial Judge granted time to the petitioner till 16.7.2024. On 16.7.2024 advocate of the petitioner filed Vakalatnama and made application, Exh. 67, seeking time to file written statement. However, the said application was rejected on 16.7.2024 and the matter was adjourned to 6.8.2024. On 6.8.2024 the learned Judge was not available.
3. The learned counsel for the petitioner submits that on 23.8.2024 the petitioner moved another application at Exh. 68 and requested to condone the delay occurred in filing application and to take written statement on

record along with written statement. The said application was allowed by the Trial Court on 14.1.2025 subject to payment of cost of Rs.500/- to be deposited before the next date of hearing. On the next date of hearing i.e. on 10.02.2025 the learned Presiding Officer was on leave and the petitioner, being a student and unaware of procedure, was under bonafide impression that the cost could only be paid in the presence of the Presiding officer and with the permission of the court. On 1.4.2025 the petitioner moved another applicaion, Exh. 74 for depositing of the cost and taking the written statement on record. However, the learned trial court rejected the application and vacated the earlier order passed below Exh. 68.

4. The petitioner challenges both the orders before this Court contending that there was bonafide mistake on the part of the petitioner in not depositing the cost of Rs.500/-. On 10.2.2025 as the Presiding Officer was on leave and the petitioner being student under the bonafide impression that the cost is required to be deposited when the Presiding Officer is available . Therefore, he made attempt to pay cost on the next date which was not allowed.

5. Per contra, the learned counsel for the respondent No. 1/original plaintiff submits that the plaintiff failed to pay cost of Rs.500/- on 10.2.2025 and the defendant/petitioner has filed application at Exh. 74 on 1.4.2025 praying to allow him to deposit the cost and accept the amount. The learned counsel submits that the petitioner is interested in lingering the matter and that the delay is caused in the matter due to conduct of the petitioner.

5. The learned counsel for the respondent No. 1/plaintiff submits that in such situation in the interest of justice, it is necessary to direct the trial

court to dispose of the injunction application, Exh. 5 and further hearing of the suit be also expedited.

6. Considering the submissions, there is no dispute that on 10.2.2025 the Presiding Officer is on leave. The petitioner being student under bonafide impression and unaware of procedure has not deposited the amount of cost as the Presiding Officer is not available is acceptable explanation. Considering the above, the impugned orders are quashed and set aside. Petitioner is directed to deposit the cost of Rs.500/- before the Trial Court within four weeks from today. After depositing of cost, written statement of the petitioner be taken on record.

7. The learned counsel for the parties submit that they would cooperate with the trial Court in proceeding with Exh. 5 and also in deciding the suit as expeditiously as possible. Statement accepted.

8. The writ petition is disposed of in aforesaid terms.

(ARUN R. PEDNEKER, J.)

ssc/