

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4307 OF 2024

Krishna Anna Nalawade

...Petitioner

vs.

Sajjangadh Education Trust

...Respondent

Mr. C. K. Bhangoji for the Petitioner

Mr. Mohan B. Jadhav a/w. Mr. Rajesh S. Jadhav for the Respondent.

CORAM : M. M. SATHAYE, J.

DATED : 20th MARCH 2025

PC.:

1. Heard learned Counsel for the parties.
2. By this Petition, the Petitioner/Original Defendant is challenging the order dated 26/02/2024 passed in the Notice of Motion No. 2062 of 2022 in S.C. Suit No. 1107 of 2013. By the said impugned order, the motion taken out by the Petitioner for setting aside the *ex-parte* decree dated 03/07/2015 is allowed, thereby setting aside the *ex-parte* decree on the condition of payment of costs of Rs.1,50,000/-.
3. Records show that on 07/01/2025, this Court granted stay to the impugned order to the extent of payment of costs. Undisputedly, the Respondent/Original Plaintiff has not challenged the impugned order and as such, the aspect of setting aside the *ex-parte* decree has attained finality and only dispute that remains is about the costs to be imposed as a condition for setting aside the *ex-parte* decree.

4. Learned Counsel for the Petitioner submitted that the *ex-parte* decree was for recovery of Rs.9,50,000/- alongwith interest. He submits that from the impugned order it cannot be seen why such heavy costs are imposed in the facts and circumstances of the case, especially when the Trial Court, after going through the medical documents produced by the Petitioner regarding illness of his wife, son, daughter, mother, mother-in-law and himself, has held that reasons mentioned in the Petitioner affidavit in support of motion is true and reasonable.

5. On the other hand, learned Counsel for the Respondent/Plaintiff has opposed grant of any relief so far as costs are concerned. It is submitted that the *ex-part* decree was passed in the year 2015 and the Petitioner/Defendant has filed restoration motion after about period of about 7 years, thereby stalling recovery of money. He submitted that Plaintiff is a trust and the Petitioner/Defendant had illegally withdrawn certain amounts from the account of the Trust, for which recovery was initiated. He submits that therefore the costs imposed are proper and no interference is called for.

6. I have considered the rival submissions and perused the records.

7. Considering the amount awarded under *ex-parte* decree, apparently the costs appear to be disproportionate at least *prima facie*. The impugned order does not record any reason for subjecting the Petitioner to such heavy costs. Be that as it may. The Respondent/Plaintiff may have its own reason for insisting on the heavy costs and even the Court can have its reasons for awarding it. However, the basis on which the cost of Rs.1,50,000/- is imposed is not seen from the impugned order

8. In that view of the matter, without entering into the merits of the rival

contention about the appropriate quantum of costs, the Petition is disposed of by passing following order:

(a) Clause 2 of the impugned order imposing costs as a condition for restoration of the suit, is set aside.

(b) The motion is restored on the file of the Trial Court only for consideration of appropriate costs to be imposed.

(c) Learned Trial Judge to hear both the parties on the quantum of the costs and after considering all the relevant aspects, appropriate amount of costs be imposed by a reasoned order.

(d) Learned Trial Court is requested to undertake this exercise within a period of 8 weeks from presentation of this order, considering that the suit is of the year 2013.

(e) It is clarified that the restoration of the suit is not interfered with. Rival contentions about the quantum of costs alone are kept open.

9. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)