

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 19223 OF 2024

Farjana Jalaluddin Shaikh

... Petitioner

Versus

Ramesh Pita Narhar Dikshit and Anr

... Respondents

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Mr. Rahul S. Rane i/b Satyajeet Rajeshirke for the Petitioner.
Mr. Vinod Y. Bhide for the Respondents.
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CORAM : SHAILESH P. BRAHME, J.

DATE : 16th JUNE, 2026

P. C. :-

. Heard both the sides.

2. The petitioner has taken exception to the order dated 25.11.2024 passed below Exh.30 by the 3rd Joint Civil Judge, Junior Division, Solapur in R.C.S. No. 470 of 2023 and more specific, grievance is against the direction to pay arrears of rent of Rs.2 lakh in 10 installments.

3. Learned counsel for the petitioner submits that imposition of condition of payment of Rs.2 lakh is not only onerous but without jurisdiction. There is no serious grievance for cost of Rs.15,000/- imposed by the trial Court in the impugned order. It is submitted that, virtually the relief of payment of arrears is granted by the Court without

there being any opportunity to contest the matter which is against the principles of natural justice. It is submitted that the petitioner could not file written statement for the genuine reasons and wanted to contest the suit seriously. A counter claim was also made which is subsequently rejected on the technicalities.

4. The submissions are contested by Mr. Bhide, learned counsel for the respondents by relying on affidavit-in-reply. It is submitted that respondent – plaintiff examined 03 witnesses and closed evidence on or about 30.08.2024. There is gross delay and negligence on the part of the petitioners which has caused great prejudice to the petitioners. It is submitted that imposition of the condition to pay Rs.2 lakh is within four corners of Order XV-A of the Civil Procedure Code (Bombay Amendment). It is permissible for the trial Court to call upon the lessee to pay the arrears. To substantiate his submissions, learned counsel has placed reliance on the judgments in the case of *Dharmendra Kalra & Ors. V. Kulvinder Singh Bhatia, AIR Online 2026 SC 414* and *Sohan Lal V. Hodal Singh & Ors. AIR 1979 Allahabad 230*.

5. At the outset, it is clarified that both parties are not serious regarding condonation of delay in setting aside No W.S. order by imposing costs of Rs.15,000/-. This Court cannot be oblivious of the fact

that respondents-plaintiffs have closed evidence after examining 03 witnesses on 30.08.2024. The counter claim which was permitted to be filed on record subsequent to the impugned order is rejected. In such situation, this Court has to examine validity of the direction to pay Rs. 2 lakh.

6. The application below Exh.30 was submitted by the petitioner for setting aside No W.S. order, passed on 06.01.2024. The delay was also sought to be condoned by the applicant. This Court is of the considered view that it would be open for the trial Court either to reject the application or to set aside No W.S. order by imposing costs. The imposition of the cost is within the discretion of the Court. In the present matter, considering the progress of the matter, I find that the cost of Rs.15,000/- is inadequate and needs to be enhanced to Rs.25,000/-.

7. The trial Court has discretion to invoke powers under Order XV-A of the CPC. But the same would be done independently either at the first hearing of the proceeding or thereafter. In the present case, while considering Application Exhibit-30, the Trial Court should not to have invoked those powers. No reasons are assigned by the learned Judge for invoking the powers. It is trite law that if powers are to be exercised and any adverse orders are to be passed, then opportunity should have

been given to the petitioner/defendant. The impugned order does not spell out that the petitioner was ever intimated about the action under Order XV of CPC. In that view the matter, the impugned order suffers from the perversity and arbitrariness.

8. My attention is adverted to law laid down by the Allahabad High Court in the case of *Sohan Lal* (supra). The facts of that case are distinguishable. In the present matter, the trial Court was considering setting aside No W.S. order as well as condonation of delay. I find that the judgment would not enure to the benefit of the learned counsel for the respondents. Another judgment of the Supreme Court, *Dharmendra Kalra* (supra), is on the ground of discretion of the Court under Order 15, Rule 5 (Uttar Pradesh State Amendment of 2016). The facts are also distinguishable from the present case. This judgment also will not assist this Court.

9. It is made clear that it would be open for the parties or the Court to invoke powers under Order XV-A independently. Needless to state that in that case, hearing is required to be given to the parties. The order passed today shall not be an impediment to invoke those powers.

10. For the reasons stated above, I find that the impugned condition of payment of arrears of Rs.2 lakh incorporated in clause 2 is quashed and

set aside. The cost of Rs.15,000/- is enhanced to Rs.25,000/-, to be deposited in the trial Court or paid directly to the plaintiff within a period of four (4) weeks from today.

11. The Writ Petition is disposed of with the above directions and the application below Exh.30 shall stand allowed in the above terms.

12. The petitioner shall co-operate for expeditious disposal of the suit.

(SHAILESH P. BRAHME, J.)