

**Order below Ex.36.****( Passed on 18.07.2018)**

The present application is filed by the defendant under Order 47 Rule 1 read with Section 151 of the Code of Civil Procedure (hereinafter the C.P.C) to reconsider the amount of the costs awarded while passing order below Ex. 25.

2. Perused the application and say. I consider submissions of both advocates. Advocate for plaintiff relied on **A. Shanmugam v/s Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others, (2012) 6 SCC 430.** Perused the entire record. Now in the present case the defendant and other shop keepers were permitted to file their written statement by virtue of the order passed below Ex 25 on 20.06.2018. While passing the said order I have consider the pronouncement of Hon'ble Apex Court in case of *Kailash v/s Nanhku, AIR 2005 SC 2441, R. N. Jadi and brothers v/s Subhashchandra AIR 2007, SC 2571, Mohd. Yusuf v/s Faiz Mohammad AIR 2009 SC 1741.* At the same time I have also consider submission advanced by present defendant and the case laws laid down by them at the time of hearing. The said order has been passed after considering all the fact and circumstances. Accordingly, while passing the said order the costs of Rs.4,000/- has been imposed upon the defendants.

3. The defendant and other shop keepers submitted that the plaintiff Sansthan has created bifurcation in two Gates. The

Sansthan imposed barricades so as to no devotees would come to the shop. The defendant has indeed submitted in this application that due to said act of Sansthan he is facing financial loss which resulted into the poor financial condition. Per contra, the plaintiff strongly opposed this contention. The plaintiff submitted that the defendant and other shop keepers are depositing the rent amount in the court. Further, the costs imposed upon the defendant is not to deterrent. The defendant are engaging a senior counsel in the Hon'ble High Court by paying the fees more than Rs.1.50 lac for per hearing. Now this submissions have also made in the course of argument.

4. I carefully consider the submission of both advocate. Now the present application is to reconsider the amount of costs. The defendant has prayed to reduce the cost up to Rs. 500/- or to grant permission to deposit an amount of Rs.4,000/- in four installment i.e. 1000/- for per month. To that the plaintiff has strongly opposed. The title of the present application shows that it has filed under the provision of Order 47 Rule 1 of read with section 151 of the CPC. Now I have gone through all contention of the defendants. The application itself doesn't show that there was any error apparent on record by passing order below Ex. 25. Their grievance is not to the observation made by the court while passing order. They have pressed on the point of reducing the cost which has been imposed upon them.

5. While passing order below Ex. 25, I consider ratio laid down in case of *Kailash* which is authoritative pronouncement of Hon'ble

Apex court. Wherein it has been clearly observed that the court may impose costs for dual purpose (I) to deter the defendant from seeking any extension of time just for asking and (II) to compensate the plaintiff for the delay and inconvenience caused to him. Now first of all let me mention here that while passing order below Ex. 25 I have thoroughly consider the difficulties which have faced by the defendant to put the said application. Thus, the order was passed and permission was granted to defendant to adduce his written statement. Admittedly, the said application of the defendant was filed at too late stage. But considering the submission and difficulties which have faced by the defendant, the said application was allowed.

6. Further, the record shows that on 04.07.2018 I have consider the application of the defendant and grant time to pay the costs. Later on this application has been filed. The contention of the defendant is based upon the situation which has created by the Santhan in Gajanan Maharaj Temple. Now it has indeed argued on behalf of defendant that the court has power to discover the truth by appointing an advocate to visit the temple and to bring the real situation before the court. But I must mention here that for deciding this point no material has placed before me. It is up to the parties to bring this situation. And it is only the duty of the court to discover the truth from the pleading, documents and agreement advanced by the parties. Therefore, the situation of the temple is not matter of the record. Thus, I do not deed fit to accept this submission.

7. As the defendant and other shop keepers are claiming relief that to reduce the amount of costs and to permit them to deposit by installment method. First of all the sufficient time has been granted to the defendant and other shop keeper from 20.06.2018 to till today. I think it is sufficient period which has been given the defendant to deposit the costs. Thus, I do not deem fit to grant further permission to make the payment of costs by installment method. Now question is to reduce the amount of cost. Let me mention here that while imposing the cost the court is not expected to mere focus on the aspect to deter the defendant but at the same time the purpose of costs is to compensate the plaintiff. While passing the order below Ex.25 I have consider the delay which was caused due to the mistake of defendant for not filing the written statement on the record. This ultimately led the plaintiff to get the suit proceed further. Thus, the side of plaintiff also needs to be taken into consideration that they have suffered mental agony due to the delay caused by the defendant and other shop keepers. Thus, I think on considering above discussion I do not deem fit to reduce the amount of costs to Rs.500/- and permitting the defendant and other shop keepers to pay the amount of costs by installment method. Thus, considering the above discussion, I pass following order,

**: ORDER :**

- 1) The application is hereby rejected.

- 2) The defendant is hereby directed to pay the amount of costs by view of order passed below Ex. 25 within 7 days from today without fail.
- 3) Parties and their Advocate proceed in the case expeditiously and take note of order.

Date: 18.07.2018

( V. V. Kulkarni )  
Civil Judge Junior Division,  
Shegaon, District Buldana.