

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1430 OF 2014

WITH

CIVIL REVISION APPLICATION (STAMP) NO.5243 OF 2014

Mohammad Husain Gulam Rasul Sayyed]
and Ors.] ... Petitioners

Versus

Smt. Nazma Mustaq Kadari.] ... Respondent

Mr. Sachin Chavan for Petitioners.
Mr. S. A. Tarale for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- JULY 10, 2015

P. C. :-

1. Rule in Writ Petition No.1430 of 2014. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
2. The challenge in this petition is to the order dated 19/08/2013 made by the Small Causes Court, Pune, declining to condone delay of over two years in filing Written Statement and consequently denying the Petitioners leave to file Written Statement.

3. From the perusal of the impugned order and the record, it appears that the Petitioners herein had filed application under Order 7 Rule 11 of the CPC seeking rejection of the plaint on the grounds that the same was barred under Section 11 of the CPC (*res-judicata*). The application under Order 7 Rule 11 of the CPC has since been rejected by the Small Causes Court on 14/04/2011 by observing that the issue of *res-judicata* will be decided along with other issues. The Petitioners have preferred Civil Revision Application challenging the order dated 14/04/2011. Such Revision Application has been preferred after delay of 2 years and 217 days and the Civil Application No.191 of 2014 seeks condonation of delay. There is really no reason which prevented the Petitioners from filing Written Statement within time. However, it is possible that the Petitioners went by the legal advice tendered to them that in view of the application under Order 7 Rule 11 of the CPC, there was no necessity to file the Written Statement in time. The impugned order dated 19/08/2013, in the circumstances, does appear to be harsh. Interest of justice would be met if the Petitioners are permitted to file their Written Statement subject, of course, to certain conditions, including payment of costs. There is however, no justification to condone the delay in filing the Civil Revision Application. In any case, even order dated 14/04/2011 which is made in the Civil Revision Application, warrants no interference. It is always open to the Petitioners to raise the issue of *res-judicata* in the Written Statement and such issues can be decided along with the rest of the issues. Therefore, this Writ Petition and Civil Application No.191 of 2014 are disposed of with the following

order :

- (a) The impugned order dated 19/08/2013 in Writ Petition No.1430 of 2014 is set aside.
- (b) The Written Statement filed by and on behalf of the Respondents along with their application dated 12/06/2013 is directed to be taken on record.
- (c) The aforesaid is subject to the Petitioners depositing before Small Causes Court costs of Rs.15,000/- (Rupees Fifteen Thousand Only) within a period of two weeks from today. Such costs, once deposited, can be withdrawn by the Respondents unconditionally.
- (d) Civil Application No.191 of 2014 is dismissed. Consequently, the order dated 14/04/2011 made by the Small Causes Court is confirmed.
- (e) The learned Small Causes Court is directed to dispose of Regular Civil Suit No.32 of 2011 as expeditiously as possible and in any case, within a period of one year from today.
- (f) The Petitioners are directed not to seek unnecessary adjournments or protract the matter.
- (g) The issues, including the issue of *res-judicata*, if raised, to be decided together at the stage of final disposal of the suit.
- (h) Parties to appear before the Small Causes Court on 13/07/2015, which is even otherwise the date fixed for appearance in the matter.

- (i) Rule is made absolute to the aforesaid extent in Writ Petition No.1430 of 2014 and Civil Application No.191 of 2014 is dismissed.
- (i) All concerned to act on basis of authenticated copy of this order.
- (j) In view of dismissal of Civil Application No.191 of 2014, Civil Revision Application (Stamp) No.5243 of 2014 does not survive and hence disposed of.

(M. S. SONAK, J.)