

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5123 OF 2015

Shri. Hanumant S. Awate .. Petitioner
vs.
Shri. Sanjay B. Naik & ors. .. Respondents

Mr. Purshottam G. Chavan for the Petitioner.
Mr. Ajit J. Kenjale for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 26 OCTOBER 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 9 January 2015, by which the Trial Court has declined to condone the delay for filing application to set aside the order dated 20 October 2011 for striking of the Petitioner's defence for non-compliance with the orders regarding deposit of rents during pendency of the suit.

3] Mr. Purshottam G. Chavan, learned counsel for the Petitioner, has submitted that the matter was earlier looked after by Power of Attorney Holder, who had engaged an advocate to appear for the Petitioner. The Attorney as well as the advocate, at some stage, abandoned the proceedings. The Attorney has since expired. On account of all this, the Petitioner was genuinely unaware of the

orders for deposit of rent as well as the order striking of his defence. Mr. Chavan submitted that this constitute sufficient cause for condonation of delay. Further, upon taking instruction from the Petitioner, who is present in the Court, Mr. Chavan submitted that the Petitioner, as against contractual rent of Rs.106/- per month, would pay rent at the rate of Rs.1000/- per month, in case opportunity of defence is afforded to the Petitioner.

4] Mr. Ajit Kenjale, learned counsel for the Respondent-landlord, submitted that the conduct of the Petitioner does not entitle the Petitioner to any equitable reliefs. The Petitioner claims to be residing in the suit premises and cannot claim ignorance about requirement of payment of rent. Mr. Kenjale pointed out that more than ample opportunity granted by the Trial Court before striking of the Petitioner's defence. The Petitioner was very much aware of the impugned order, but delayed in applying for setting aside the same. Mr. Kenjale submitted that the proceedings were initiated in the year 2004 and on account of conduct of the Petitioner, the same have been unduly delayed.

5] Upon hearing the learned counsel for the parties and perusing the record, although it is true that the Petitioner has not followed

the matter with due diligence, the order of striking of defence, in the facts and circumstances of the present case appears to be harsh. No doubt, the Respondent-landlord is bound to suffer some prejudice in case liberty is granted to the Petitioner to lead defence evidence in the matter. However, that prejudice can be sufficiently compensated by the statement and/or undertaking of the Petitioner that he shall pay arrears at the rate of Rs.1000/- per month from 1 November 2011 and continue to pay the same until the disposal of the suit. This will afford substantial pecuniary solace to the Respondent. Besides, it is to be noted that the Petitioner's attorney has expired and the Petitioner's advocate also withdrew appearance. Taking into consideration of all such circumstances cumulatively, the interest of justice would be met if the impugned orders dated 20 October 2011 and 9 January 2015 are set aside and the Petitioner is afforded an opportunity for leading defence evidence.

6] Accordingly, the impugned orders dated 20 October 2011 and 9 January 2015 are set aside. The Petitioner is permitted to lead defence evidence in the suit. The suit which is of the year 2004 is directed to be expedited. The Trial Court shall make endeavor to dispose of the same as expeditiously as possible and in any case within a period of six months from today. Both parties to cooperate

in the matter of expeditious disposal and avoid from taking unnecessary adjournment. This relief is subject to the Petitioners' complying with his statement that the rents in respect of suit premises with effect from 1 November 2011 will be paid at the rate of Rs.1000/- per month. The time for payment of arrears is granted upto 31 December 2015. In case, the arrears are not paid or deposited before the Trial Court on or before 31 December 2015, the defence of the Petitioner shall stand struck off without any further reference to this Court. In case, the amounts are deposited in the Trial Court before the said date, the Respondent-landlord shall be at liberty to withdraw the same unconditionally.

7] The Petitioner has deposited an amount of Rs.17,115/- approximately in the Trial Court. The Petitioner shall be entitled to credit for the same and the Respondent-landlord shall be entitled to withdraw the same unconditionally forthwith.

8] Rule is made absolute to the aforesaid extent. There shall, however, be no order as to costs.

9] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)