

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9293 OF 2014

Arvind K. Kulkarni	..	Petitioner.
V/s.		
Anil S. Karve	..	Respondent.

Mr. D. M. Gupte, for the Petitioner.
Mr. P. B. Kulkarni, for the Respondent.

CORAM: M.S.SONAK,J.
DATE : 27th MARCH, 2015.

P.C:-

RULE. With the consent of and at the request of learned Counsel for the parties, rule is made returnable forthwith.

2 This Petition challenges the order dated 18th February, 2014 made by the 3rd Joint Civil Judge, Junior Division, Pune to the extent it declines to re-call' 'No Written Statement order' made out on 26th November, 2013.

3 The order dated 18th February, 2014, in fact, dismisses Petitioner's applications seeking for rejection of plaint under Order VII Rule 11 of the CPC and under Exh. 12, seeking to re-call of 'No Written Statement order' made on 26th November, 2013. However, the learned Counsel for the Petitioner, has made it clear that the challenge in so far as the order made on application under Order VII Rule 11 of the CPC is not pressed on account of certain subsequent amendments effected by the

Respondent/ Plaintiff to the plaint. Accordingly, the present Petition is restricted to the extent indicated herein above.

4 In this case, the suit in question was instituted on 25th July, 2013 and the summons which was issued to the Petitioner- Defendant was made returnable on 26th September, 2013. On the said date, as the learned Civil Judge was unavailable, the matter was adjourned to 19th October, 2013. On this date, the Petitioner appeared through Advocate and applied for time to file written statement. The same was granted and the matter was posted to 18th November, 2013. On this date also, further time was applied to file written statement and the same was granted up to 26th November, 2013. On 26th November, 2013, the Petitioner did not file written statement, but filed an application under Order VII Rule 11 of the CPC. On this date, the learned Civil Judge, made '*No Written Statement order*'. This was incidentally the 60th day from the date upon which the original summons for the suit was made returnable.

5 On 11th December, 2013, the Petitioner applied for recall of '*No Written Statement order*' made on 26th November, 2013. Same has been rejected by the learned Civil Judge on the ground that there was no sufficient cause shown by the Petitioner for non-filing the Written Statement within the period of 90 days from the date of the service of the summons.

6 The learned Counsel for the Petitioner submitted that the summons in the present case did not state that the Petitioner was required to file his written statement within a period of 30 days. Further, on the 60th day from the date it was indicated as returnable in the summons, the

Petitioner filed application under Order VII Rule 11 of the CPC for rejection of the plaint. Until such application was decided, there was no obligation to file written statement. That apart, the Petitioner had offered explanation as to why the written statement could not be filed within the prescribed time. The '*No Written Statement order*' was made even before the expiry of period of 90 days from the date of receipt of summons. For all these reasons, learned Counsel for the Petitioner submitted that the impugned order is required to be set aside and leave be granted to file written statement.

7 The learned Counsel for the Respondent-Plaintiff submitted that more than adequate opportunity came to be granted to the Petitioner for filing of the written statement. Accordingly, there is no jurisdictional error in the making of the impugned order.

8 Upon hearing rival contention and perusing the record, in my judgment, the impugned order to the extent it declines to re-call the '*No Written Statement order*' made on 26th November, 2013 is required to be set aside, though subject to payment of costs by the Petitioner-Defendant herein.

9 In this case, '*No Written Statement order*' was made even prior to the expiry of period of 90 days from the date of receipt of the summons. Undoubtedly, learned Civil Judge had power to make such an order but looking to the circumstances of the case, there was no reason to make same. The Petitioner had applied for time on two occasions to file the written statement. This was within period of 60 days from the date of receipt of the summons. On both the occasions, the learned Civil Judge

exercised its discretion and granted said time, presumably because sufficient cause was made out for the grant of the same. On the 60th day, the Petitioner did not file written statement but file application under Order VII Rule 11 of the CPC, perhaps on advise that the plaint deserves to be rejected. On the same date, '*No Written Statement order*' came to be made, without there being any adjudication on the application under Order VII Rule 11 of the CPC.

10 Thereafter, i.e. hardly within 15 days, the Petitioner applied for re-call of '*No Written Statement order*'. Reasons as to why the written statement was not filed earlier are stated in such application. Such application was also made within the period of 90 days from the date of receipt of the summons. If all such circumstances are considered and there was really no reason to decline to re-call the '*No Written Statement order*' because in the meantime, period of 90 days has elapsed from the date of service of summons.

11 No doubt, prejudice is bound to occasion the Respondent-Plaintiff on account of delay on the part of the Petitioner-Defendant in filing written statement within prescribed time. However, looking to the circumstances, such prejudice can always have been compensated in terms of costs.

12 The impugned order inasmuch as it declines to re-call '*No Written Statement order*' made on 26th November, 2013 is set aside. The '*No Written Statement order*' made on 26th November, 2013 is also set aside. The Petitioner-Defendant is at liberty to file his written statement to the original plaint as well as the amended plaint within a period of two

weeks from today without fail. The Petitioner-Defendant shall also pay costs of Rs.7,500/- (Rupees Seven thousand five hundred only) to the Respondent-Plaintiff within the period of two weeks from today. Such costs may be either directly paid to the Respondent-Plaintiff or deposited with the Trial Court. Upon deposit, the Respondent-Plaintiff shall be at liberty to withdraw the same unconditionally. The learned Civil Judge to ensure that said costs be paid/ deposited by the Petitioner-Defendant within the period prescribed.

13 Rule is made absolute to the above said extent. There shall be no such separate order as to costs in this Petition.

14 All parties to act on an authenticated copy of this order.

(M.S.SONAK,J.)