

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.6767 OF 2014**

|                                               |   |              |
|-----------------------------------------------|---|--------------|
| The President of India                        | ) |              |
| through the Director of                       | ) |              |
| Construction, Services & Estate               | ) |              |
| Management Department of Atomic               | ) |              |
| Energy, Government of India                   | ) |              |
| Vikram Sarabhai Bhavan, 2 <sup>nd</sup> floor | ) |              |
| North Wing, Anushaktinagar,                   | ) |              |
| Mumbai 400 094                                | ) | ..Petitioner |

Vs.

|                                       |   |               |
|---------------------------------------|---|---------------|
| 1 Subhash Amolakchand Gandhi          | ) |               |
| of Mumbai, an adult Indian Inhabitant | ) |               |
| having his address at Room Nos.15/16, | ) |               |
| Ground floor, Bhupen Chambers         | ) |               |
|                                       |   |               |
| 2 The Municipal Corporation           | ) |               |
| of Greater Mumbai                     | ) |               |
| Mahanagarpalika Marg,                 | ) |               |
| Mumbai 400 001                        | ) |               |
|                                       |   |               |
| 3 New Navrang Co-operative            | ) |               |
| Housing Society Limited               | ) |               |
| having its office at Navrang,         | ) |               |
| Off Peddar Road, Mumbai 400 026       | ) | ..Respondents |

Mrs. Jyotsna N. Pandhi for the Petitioner  
Mr. Kishore Jain i/b Ms Nisha Parmar and Ms Divya Jain for the  
Respondent No.1

CORAM : R. M. SAVANT, J.  
DATE : 22<sup>nd</sup> SEPTEMBER, 2015

**ORAL JUDGMENT**

1           At the outset, the Learned Counsel for the Petitioner seeks deletion  
of the Respondent Nos.2 and 3 to the above Petition in view of the fact that the

said Respondents are only formal parties in the context of the challenge raised in the above Petition. The said Respondents are accordingly deleted at the risk of the Petitioner.

2           Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3           The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 8-5-2014 passed by the Learned Judge of the City Civil Court Bombay by which order the Notice of Motion being No.3941 of 2013 filed by the Petitioner for seeking extension of time to file the Written Statement and for the Written Statement to be taken on record, came to be rejected.

4           It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioner herein who is the Defendant No.1 did not file its Written Statement though the summons were served upon it on 21-10-2010. The Suit in question was initially filed in this Court and bore Suit No.2682 of 2010, on the pecuniary jurisdiction of the City Civil Court being enhanced, the Suit came to be transferred to the City Civil Court, Bombay. It appears that the Defendant No.3 filed its Written Statement on 5-8-2011. It is an undisputed position that the issues have been framed in the Suit

and that the Plaintiff has also filed its affidavit of evidence and the Suit is at the stage where it is kept for admission and denial of documents. It is at the said stage that the instant Notice of Motion came to be filed and the ground made out was that though the Suit whilst it was pending in this Court had come up for directions, no directions were issued for filing of the Written Statement. It was further the case of the Applicant that though draft of the Written Statement was prepared it was not finalised and therefore it could not be filed. The Defendant No.1 therefore sought condonation of delay or the extension of time to file the Written Statement. The said application i.e. the Notice of Motion was replied to on behalf of the Plaintiff and it was contended by the Plaintiff that the act of the Defendant No.1 in not filing the Written Statement revolves around negligence and that the ground made out does not constitute sufficient cause for seeking extension of time to file the Written Statement.

5           The Trial Court i.e. the Learned Judge of the City Civil Court Bombay considered the said application. The Trial Court adverted to the fact that since the Suit was earlier filed in this Court on its Original Side and was pending in this Court till it was transferred to the City Civil Court, in terms of the judgment of the Apex Court, the provision of the Civil Procedure Code are not applicable and it is the Rules of the Original Side which apply and which govern the filing of the Written Statement and therefore the application

seeking extension of time to file the Written Statement could not be considered. The Trial Court also observed that the grounds made out by the Defendant No.1 in the Notice of Motion do not constitute sufficient cause and accordingly rejected the Notice of Motion by the impugned order dated 8-5-2014. As indicated above, it is the said order rejecting the Notice of Motion which is taken exception to by way of the above Petition.

6           The Learned Counsel appearing on behalf of the Petitioner / Defendant No.1 and the Learned Counsel appearing on behalf of the original Plaintiff i.e. the Respondent No.1 to the above Petition made submissions for and against the time being extended to file the Written Statement and that the Written Statement being taken on record. However, the Learned Counsel appearing on behalf of the original Plaintiff fairly left it to this court as to whether the time to file the Written Statement was required to be extended. However it was the request of the Learned Counsel for the Respondent No.1 / Plaintiff that the Suit be expedited considering the nature of the controversy involved.

7           Having heard the Learned Counsel for the parties, in my view, the above Writ Petition is required to be allowed and the impugned order dated 8-5-2014 is required to be quashed and set aside. As indicated above, the issue in the above Petition is as regards whether time to file the Written Statement on behalf of the Defendant No.1 is required to be extended. It is well settled by catena of judgments of this Court as well as the Apex Court that Order VIII

Rule is is held to be directory and not mandatory and for good and sufficient reasons time to file the Written Statement can be extended. In the instant case, the Defendant No.1 i.e. the Petitioner herein is the Union of India and therefore some indulgence would have to be shown to the Union of India as a judicial notice can be taken of the fact that some time is lost in arriving at a decision in so far as filing of pleadings whilst prosecuting a particular litigation is concerned. In my view therefore, having regard to the reasons mentioned in the Notice of Motion and considering the fact that the Suit came to be transferred to the City Civil Court in the year 2012 where obviously the provisions of Civil Procedure Code are applicable, the impugned order dated 8-5-2014 is required to be quashed and set aside and is accordingly quashed and set aside. The Notice of Motion would resultantly stand allowed. The Defendant No.1 would be entitled to file its Written Statement which it would do within two weeks from date, as according to the Learned Counsel for the Petitioner, the Written Statement is ready for filing. Since the instant order has intervened and since having regard to the fact that the Suit was at the stage when the issues were framed and affidavit of evidence was already filed and in view of the instant order, the clock has been set back a bit it would be just and proper that the hearing of the Suit is expedited. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

**[R.M.SAVANT, J]**

**CERTIFICATE**

Certified to be true and correct copy of the original signed judgment