

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8069 OF 2014**

**Pramod Mukund Ravrane
Vs.
Chandrabhan Chawla & Anr.**

**..Petitioner

..Respondents**

**Mr. Neil Patel i/b Mr. Pratik Thakkar for the Petitioner
Mr. Dinesh C. Shah for the Respondent No.2**

**CORAM : R. M. SAVANT, J.
DATE : 9th JANUARY, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 21-4-2014 passed by the Learned Judge of the City Civil Court, Mumbai by which order, Notice of Motion No.3823 of 2013 filed by the Respondent No.2 i.e. original Defendant No.2 came to be allowed and the Defendant No.2 was permitted to file his Written Statement.

2 The Suit in question being Suit No.8030 of 2002 was initially filed in this court for specific performance of contract in respect of a sale of flat and whilst it was pending in this Court was numbered as High Court Suit No.2695 of 2002. In the said Suit, an application for interim relief came to be filed by the Petitioner i.e. the original Plaintiff. The said application for interim relief came to be allowed by a learned Single Judge of this Court by order dated 22-7-2004 and the Defendant No.2 was directed to deposit a sum of Rs.1,16,000/- in this Court. It seems that being aggrieved by the said order passed by a

Learned Single Judge of this Court, the Defendant No.2 filed an Appeal being Appeal No.579 of 2004. The said Appeal came to be dismissed by a Division Bench of this Court by order dated 17-9-2004. It seems that pursuant to the directions issued in the Notice of Motion, the Defendant No.2 has deposited the said amount of Rs.1,16,000/- in this Court. The Suit thereafter lay dormant meaning thereby it was not listed. The Suit came to be transferred to the City Civil Court, Mumbai on the pecuniary jurisdiction of the City Civil Court, Mumbai being enhanced and the said transfer was in or about September / October 2012. It seems that the Suit was listed before the City Civil Court in the middle of 2013. It seems that an adjournment was granted to the Defendant No.2 on account of the illness of the Advocate of the Defendant No.2. The instant application being Notice of Motion NO.3823 of 2013 came to be tendered on 25-11-2013 for condonation of delay in filing the Written Statement. The said Notice of Motion was replied to on behalf of the Petitioner/Plaintiff. The Trial Court considered the said Notice of Motion and has by the impugned order dated 24-4-2014 has allowed the same.

4 The gist of the reasoning of the Trial Court was that after the interim reliefs were granted in the Suit, the Suit was dormant in this Court and thereafter came to be transferred to the City Civil Court, Bombay and the Trial Court accepting the case of the Defendant No.2 that the papers in the Suit were misplaced and that on account of the illness of the Advocate of the

Defendant No.2 that the application for taking the Written Statement could not be filed. The said reasons therefore commend acceptance to the Trial Court.

5 The Learned Counsel appearing on behalf of the Petitioner/Plaintiff would contend that there is a huge delay of 10years in filing the Written Statement and that the Trial Court has erred in allowing the Notice of Motion. In so far as the said contention is concerned, as indicated above the Suit was dormant in this Court till the year 2012 and was listed before the City Civil Court in the year 2013 after it was transferred to it in view of the enhancement of its pecuniary jurisdiction. The Learned Counsel for the Petitioner has not been able to point out as to whether the Suit was at any time listed for filing of the Written Statement in this Court. It is only after the Suit was transferred to the City Civil Court, that the same was listed and was adjourned on a couple of occasions after which the Defendant No.2 filed the instant Notice of Motion for the delay in filing the Written Statement being condoned and for the Written Statement being taken on record. The reasons cited in the affidavit in support of the Notice of Motion have commended acceptance to the Trial Court.

6 In view of the fact that the Trial Court has deemed it appropriate to accept the reasons cited and exercised discretion, this Court does not deem it appropriate to interfere with the said discretion exercised by the Trial Court

and the Trial Court for inconvenience or prejudice cause to the Plaintiff has compensated the Plaintiff by way of costs. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]