

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

Amk

APPEAL FROM ORDER NO. 154 OF 2015  
WITH  
CIVIL APPLICATION NO. 195 OF 2015

Suraksha Realtors & Ors. .. Appellants  
Vs.  
Sunil Dattaram Sogan & Anr. .. Respondents

Mr. Prakash Shinde i/b MDP & Partners for the Appellants.  
Mr. G. C. Sawant for Respondent No.1.

CORAM : MRS. ROSHAN DALVI, J.  
DATE : 24<sup>th</sup> AUGUST, 2015.

P.C.

1. The appeal has been kept on board for hearing at the stage of admission. The appeal is to be considered only upon whether the written statement of the appellants/original defendants/applicants should be allowed to be filed in the suit. The trial in the suit is in progress. The suit has been kept for ex parte decree for want of written statement tomorrow.

2. The written statement is indeed delayed. The written statement should have been filed 30 days after the service of the summons. It is not filed for several years. The interim proceeding went on. It was thereafter directed to be filed. It was yet not filed. The suit was not placed on board for trial then. Thereafter the written statement was sought to be filed and tendered. That was delayed. The learned Judge insisted upon an application to consider the sufficient cause to condone the delay. Such an application had to be taken out. In the meantime the suit itself got further delayed. The suit is shown to have been delayed in the impugned order itself on a number of occasions, on some of which when the Court was on leave. The defendants indeed did not appear diligently in that proceeding also and sought time and were granted time. When the Court was on leave,

the Judge complained, that an application to another Court would have been made but not made. The application was made thereafter and was considered and the delay has not been condoned.

3. Though it is trite that such written statement may not be accepted, it would be proper if soon after it was directed to be filed, the trial proceeds. After the application is made when it was adjourned on so many dates for various reasons including allowing adjournments on the ground that the defendants have not taken out the application to show sufficient cause, the Court must consider the delay caused by itself.

4. Ideally the parties must be heard on merits. If the case does not deserve a party to be heard on merits, he must be told that promptly. When the Court itself could not take the suit for hearing though no written statement was not filed and the suit was unopposed for a number of years and thereafter the application was itself adjourned from time to time, interest of justice would demand that only the defaulting party should not be punished. In any event the suit has taken a number of years even for an ex parte decree to be passed. The defendants, would be entitled to cross-examine the plaintiff, hence they must also be given an opportunity to defend on merits since his written statement on merits has already been tendered. This would, of course, be on payment of compensatory costs.

5. Hence the following order:

- (i) Upon the defendants paying costs of Rs.50,000/- within two weeks from today, the impugned order shall be set aside. The written statement shall be accepted on record. The suit shall proceed accordingly. If the costs are not paid within two weeks, the written statement shall not be accepted. The defendants shall, of course, be entitled to cross-examine the plaintiff.
- (ii) The suit has kept on board for cross-examination of the

plaintiff's Advocate tomorrow. It shall, therefore, stand adjourned for precisely two weeks from today. The cross-examination of the plaintiff shall be allowed. However the defendants shall be entitled to have the written statement considered and be entitled to lead their evidence only if the costs are paid within two weeks.

6. In line 2 para 4 of my previous order dated 20.08.2015 the date "15<sup>th</sup> April, 2015" shall be corrected to read "15<sup>th</sup> April, 2013".

7. The Appeal from Order as well as the Civil Application are disposed of accordingly.

**(ROSHAN DALVI J.)**