

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.2585 OF 2014

IN

WRIT PETITION NO.4654 OF 2013

Gul Kriplani

.. Applicant

Versus

Mayor Mangaldas Kothari and others

.. Respondents

Mrs. Tanmayee R. Rajadhyaksha i/by Mr. S. J. Khera, for the Applicant.

Ms. Deepti Panda i/by Dhru & Co., for Respondent No.1.

Ms. Kainaj Irani i/by Ms. Pushpa Thapa, for Respondent No.6.

Mr. Girish Jani Respondent No.3 present in Court.

Mr. Siddharth Chandrashekhar with Ms. Farheen Sheikh i/by Mr. Suresh Chandrashekhar, for Respondent No.7.

CORAM : R.M. SAVANT, J.

DATE : 12th FEBRUARY, 2015

PC.

1. The above Civil Application has been filed for the following reliefs :-

(a) that this Hon'ble Court be pleased (i) to extend the time to deposit the sum of Rs.15,000/- towards the costs; and (ii) to delete paragraph Nos.1 to 4, 7 to 19, 21, 24, 25, 28 to 36 and 40 to 47 and Exhibit Nos.1, 2 and 5 to the Applicant's additional Written Statement, pursuant to the order dated 18th October 2013 passed by this Hon'ble Court in Writ Petition No.4654 of 2013, be modified and the

Application be allowed;

(b) that pending the hearing and final disposal of the present Civil Application, the hearing o the further proceedings in Notice of Motion No.370 of 2014 in S.C. Suit No.7034 of 1998 before the Hon'ble Bombay City Civil Court at Dindoshi, Borivali Division in Court Room No.2 be stayed;

(c) for ad-interim reliefs in terms of prayer clause (b) above;

(d) For such further and other reliefs as this Hon'ble Court may deem fit and proper.”

2. The above Writ Petition in which the Civil Application has been filed was disposed by a Learned Single Judge of this Court by order dated 18th October, 2013. The said Writ Petition arose out of an order passed by the Learned Judge of the City Civil Court dated 8th February, 2013 by which order the Notice of Motion filed by the Respondent No.1 herein who was the Petitioner in the said Petition for expunging parts of the written statement filed by the Respondent No.8 i.e. Applicant in the above Civil Application on the ground that the same has been introduced in the written statement outside the procedural prescriptions came to be dismissed. The Learned Single Judge of this Court by order dated 18th October, 2013 recorded that the Defendant No.8 i.e. Respondent No.8 exceeded the limits of the additional written statement and therefore allowed the said Petition. The result was that the Defendant No.8 was

directed to delete paragraphs No.1 to 4, 7 to 19, 21, 24, 25, 28 to 36 and 40 to 47 and Exhibit Nos.1, 2 and 5 to the additional written statement. The said deletions were to be carried within four weeks from the said date. The Learned Single Judge passed the order of deletion and the Defendant No.8 was directed to pay costs quantified at Rs.15,000/- to the Petitioner in the said Petition within the same period. The time for payment of said costs therefore, came to an end on 17th November, 2013. In so far as the payment of costs is concerned, it appears that the Defendant No.8 filed an application Exh.36 for being permitted to deposit the said costs in the Trial Court pending the decision in the SLP that the Defendant No.8 proposed to file against the said order dated 18th October, 2013. In so far as the said application is concerned, the Plaintiff was directed by the Trial Court to reply to the same. It seems that the said application was thereafter pending for sometime. The Plaintiff it seems in January, 2014 filed Notice of Motion No.370 of 2014 for striking of the defence of the Defendant No.8 in view of the non-compliance of the order dated 18th October, 2013 in the matter of deletion as well as non-payment of the said costs. It is thereafter that in March, 2013, the said costs were sought to be remitted to the Plaintiff by cheque and in fact were sent to the Plaintiff which the Plaintiff it seems returned on the ground that the time for payment of the costs was over in November, 2013. It is thereafter

that the instant Civil Application has been filed in November, 2014. The reasons as to why the order dated 18th October, 2013 in the matter of deletion and payment of costs has not been complied with have been mentioned in the Civil Application. Some of the facts adverted to herein above have been mentioned as also the fact that the Defendant No.8 was desirous of challenging the order dated 18th October, 2013 in the Apex Court. The extension of time for carrying out the directions contained in the said order are therefore sought on the grounds which are mentioned in the Civil Application. The said application has been opposed to on behalf of the original Plaintiff by filing a reply. The reasons which have been mentioned are sought to be questioned by the Plaintiff and the stand taken by the Plaintiff is that only because the Notice of Motion for striking of defence of the Defendant No.8 has been filed that the Defendant No.8 has filed the instant Civil Application to get over the non-compliance of the order dated 18th October, 2013. The Learned Counsel for the respective parties made submissions for and against the time being extended.

3. In the instant case, as indicated above, the Learned Single Judge of this Court by order dated 18th October, 2013 has directed the deletion of certain paragraphs of the Additional Written Statement and exhibits which have been adverted to earlier and directed the payment of the costs of Rs.15,000/- within the period of four weeks. Though the

reasons mentioned by the Defendant No.8 do not justify the delay up to November, 2014 in the filing of the instant application and resultantly the non-payment of costs. But a perusal of the facts also does not disclose that the conduct is such that the Defendant No.8 is to be deprived of the extension of time. The conduct of the Defendant cannot be said to be deliberate or contemptuous or actuated with ill motive, in so far as the deletion of said paragraphs and the payment of costs is concerned. It is not as if that Defendant No.8 was deliberately avoiding to pay the costs, the fact that the Defendant No.8 was desirous of filing an SLP in the Apex Court can be said to be a plausible reason for non-payment of the costs within the stipulated period. For the said act of the Defendant No.8 additional costs can be imposed on him. In my view therefore, indulgence is required to be shown to the Defendant No.8 in the matter of extension of time to carry out directions in terms of the order dated 18th October, 2013 in the matter of carrying out deletion as well as the payment of costs. The time to carry out the directions is therefore extended up to 24th February, 2015. In addition to the costs of Rs.15,000/- which are directed to be paid by the order dated 18th October, 2013, the Defendant No.8 to pay additional costs of Rs.10,000/- on or before 24th February, 2015. The payment of the original costs as well as the costs directed by this order is a condition precedent. If both costs are not paid, the benefit of this order

would not ennure to the Applicant i.e. Defendant No.8 and resultantly the Civil Application would be deemed to have been rejected.

4. Since the suit is of the year 1998 and since most of the parties are senior citizens, the hearing of the suit is expedited and the Trial Court is directed to dispose of the same by 30th September, 2015. Parties to act upon a copy of this order duly authenticated by the Court Shirestedar.

[R.M. SAVANT, J]