

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.106 OF 2015**

M/s. Essel Corporate Resources Pvt.Ltd. & Anr. ...Petitioners
vs.
Harpreet Singh Thind ...Respondent

Mr. Vishal Kanade i/b. M/s. ALMT Legal for the Petitioners.
Ms. Preeti Brahmania for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 3rd MARCH, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 29th September, 2014 passed by the learned Judge of the City Civil Court, Greater Bombay, by which order the Notice of Motion No.2121/2014 filed by the Defendants for setting aside the order dated 2nd February, 2013 and thereafter to condone the delay in filing the written statement, came to be dismissed. The Respondent herein is the original Plaintiff whereas the Petitioner herein are the Defendants in the suit in question. The suit in question being Summary Suit No.3927/2010 was initially filed in this Court and was numbered as Summary Suit No.1654/2010. The said Suit has been filed for recovery of an amount of Rs.64,45,186/- with future interest @ 12% per annum which amount is the outstanding amount due to the Plaintiff from the Defendants on account of his employment with the

Defendants. The Plaintiffs had filed Summons for Judgment in the said Suit being Summons for Judgment No.347 of 2010. In the said Summons for Judgment, a reply came to be filed by the Defendants and in the said reply the Defendants have sought unconditional leave. The said Summons for Judgment came to be disposed of by a learned Single Judge of this Court by order dated 9th January, 2012 whereby the Defendants were granted unconditional leave to defend the suit. The Defendants were directed to file their written statement within four weeks from the said date and consequently the suit was transferred to the list of commercial causes. It is an undisputed position that the Defendants did not file their written statement within time stipulated by the said order dated 9th January, 2012.

2] On the pecuniary jurisdiction of the City Civil Court being enhanced the suit came to be transferred to the City Civil Court and now is numbered as Summary Suit No.3927/2010. The said transfer took place sometime in September, October 2012. It appears from the Roznama of the suit that the suit came to be registered on 27th November, 2012 before the learned Judge of the City Civil Court and thereafter has appeared from time to time before the learned Judge as can be seen from the Roznama which has been annexed to the above Writ Petition. The fact of the Defendants not filing their written

statement has been noted in the Roznama dated 2nd February, 2013. The suit has been adjourned for filing of the affidavit of evidence and original documents of the Plaintiffs from time to time. In fact, in the Roznama of 2nd February, 2013 the Trial Court has recorded that since the Defendants have failed to file written statement, the suit is set down for hearing on judgment. However, thereafter as indicated above, the suit has been adjourned from time to time for the Plaintiff to file his affidavit of evidence and original documents which the Plaintiff seems to have now complied. The instant application being Notice of Motion No.2121/2014 came to be filed by the Defendants on 3rd February, 2014 i.e. almost after a period of 2 years and 2 months of the unconditional leave being granted to the Defendants vide order dated 9th January, 2012 and the Defendants being directed to file their written statement within four weeks. The said delay is attributed to the fact that the Defendants were not aware of the no written statement order passed until they get a copy of the Roznama. It is further averred that since the Defendants have filed their reply to the Summons for Judgment, it is only through inadvertence that the written statement remained to be filed. The Notice of Motion was replied to on behalf of the Plaintiff and the reasons put forth by the Defendants in the affidavit in support of the Motion were questioned by the Plaintiff. The Trial Court has by the impugned order rejected the said Notice of Motion and the impugned

order discloses that the reasons put forth by the Defendants did not commend acceptance to the Trial Court. The Trial Court has adverted to Order 8 Rule 1 of the Code of the Civil Procedure and has observed that no doubt the Court is not powerless in extending the time but can only do so if good and sufficient reasons are made out. In the instant case, the Trial Court reached the conclusion that the Defendants had not made good and sufficient reasons for extension of time to file the written statement. The Trial Court accordingly by the impugned order dated 29th September, 2014 has dismissed the Notice of Motion.

3] The learned counsel appearing for the Petitioners Shri Kanade would seek to reiterate the case of the Petitioners which was urged before the Trial Court for seeking of extension of time to file the written statement and set aside the order dated 2nd February, 2013. The learned counsel would contend that it was on account of the fact that there was a communication gap between the Advocate and the Defendants that the Defendants were not aware of the order passed in respect of the written statement and, therefore, the time to file the written statement be extended by even imposing costs.

4] In my view, the contentions urged on behalf of the Petitioner by the learned counsel though look attractive in the first blush cannot be

entertained. It is required to be noted that the suit was pending in this Court and an order came to be passed on 9th January, 2012 granting unconditional leave to defend and the said order also stipulated the time within which the written statement was to be filed. The Defendants are a body corporate and represented by advocates. The Defendants were also represented by the counsel in this Court, when the Summons for Judgment was heard. It is an undisputed position that till the instant application was filed, no steps were taken to file the written statement. As indicated hereinabove, the suit was transferred to the City Civil Court in September, October 2012 and was appearing before the learned Judge of the City Civil Court. In fact, in the Roznama dated 2nd February, 2013 there is a recording made that the Defendants have failed to file their written statement. In spite of the said recording made in the order dated 2nd February, 2013, no steps were taken to file the written statement even then. Hence, it is a case where there is gross negligence and carelessness on the part of the Defendants one has to bear in mind that the suit in question had been originally filed under Order XXXVII of the Code of Civil Procedure and it is in that context that the application is required to be considered. Though it is trite that Order VIII Rule 1 is held to be directory and not mandatory. It is only for good and sufficient reasons that time to file the written statement can be extended. The reasons put forth by the Defendants in

the affidavit in support can hardly be said to be such reasons. In fact, they are bordering on negligence and carelessness. A right has, therefore, accrued to the Plaintiff which in my view cannot be taken away. More so considering the fact that the suit in question was a Summary Suit as originally filed.

5] In that view of the matter, the exercise of the writ jurisdiction of this Court is not warranted. The Writ Petition is accordingly dismissed.

(R. M. SAVANT, J.)