

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.31386 OF 2014**

Vishwanath Ghadi

..Petitioner

Vs.

HSBC Employees Union & Ors.

..Respondents

Mr. Sanjiv Punalekar i/b PRS Legal for the Petitioner

Mr. R. G. Bhat for the Respondent No.1

Mr. K. S. Bapat with Mr. P. D. Paranjape for the Respondent No.4

**CORAM : R. M. SAVANT, J.
DATE : 6th JANUARY, 2015**

ORAL JUDGMENT

1 At the outset, the Learned Counsel for the Petitioner seeks deletion of the Respondent Nos.2 and 3 as they are formal parties in the context of the challenge raised in the above Petition. The said Respondents are allowed to be 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 rejection of the application filed by the Petitioner/Defendant

for the Written Statement being taken on record has given rise to the above Writ Petition.

4 Shorn of unnecessary details a few facts can be stated thus:

The Suit in question being S.C.Suit No.4306 of 2013 has been filed by the Respondent No.1 herein to which the Petitioner herein is one of the Defendants. The subject matter of the Suit is the decree passed in an earlier Suit being No.2535 of 2013 by the Learned Judge of the City Civil Court, Bombay. The said decree has been challenged inter alia on various grounds which are mentioned in the plaint amongst which is the ground of the decree being obtained by fraud. The Petitioner herein as indicated above is the Defendant in the said Suit and has been so arrayed as he was the Plaintiff in the said earlier Suit in which Suit he was espousing the cause of the Union. It seems that the Writ of Summons was served on the Petitioner, in the instant Suit, however, he did not file the Written Statement within the time stipulated by Order VIII Rule 1 of the Civil Procedure Code and since there was a overlap of time, the Petitioner file the instant Notice of Motion No.2659 of 2014 for being permitted to file his Written Statement. It was averred in the affidavit in support of the Notice of Motion that the Petitioner has no personal interest and what he was pursuing was common interest of all the Defendants. The Trial Court has rejected the application principally on the ground that the reason put forth by the Petitioner could not be accepted as the Petitioner could not be said

to be a layman in so far as the legal procedure is concerned. The fact that there was a overlap of time by about 4 months seems to have weighed with the Trial Court in rejecting the Notice of Motion filed by the Petitioner. The Trial Court accordingly has by the impugned order dated 10-9-2014 rejected the said Notice of Motion.

5 In so far as the original Plaintiff i.e. the Respondent No.1 is concerned, the Learned Counsel fairly conceded that the Respondent No.1 has no objection to the Petitioner being allowed to file the Written Statement.

6 In so far as Order VIII Rule 1 of the Civil Procedure Code is concerned, it is trite that the same is directory and not mandatory and for good and sufficient reasons the time for filing the Written Statement can be extended. In the instant case, as indicated above, the overlap of time after the initial period as contemplated by Order VIII Rule 1 is a period of 4 months. The reason that is cited in the affidavit in support namely that the Petitioner has no personal interest in the matter and is merely espousing the cause of the other Defendants meaning thereby that there is no lis between the Petitioner and the Respondent No.1 i.e. the Original Plaintiff and therefore there was no reason for the Petitioner to delay the filing of the Written Statement, except the fact that for some reason the Written Statement remained to be filed. In such a situation, the court cannot be said to be powerless as it should always be the

endeavour of the Court to see to it that the matter is decided on merits rather than a litigant being thrown out on technicalities. This would also have to be considered in the context of the fact that the Respondent No.1 herein who is the original Plaintiff has taken a fair stand in the matter.

7 In my view therefore, the impugned order passed by the Learned Judge of the City Civil Court is required to be quashed and set aside and is accordingly quashed and set aside, resultantly Notice of Motion No.2659 of 2014 would stand allowed and since the Written Statement has already been served upon the Respondent No.1 and in fact was ready for filing along with the Notice of Motion, the Petitioner/Defendant No.3 may file the same within three weeks from date. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

8 The parties to act upon an ordinary copy of this order duly authenticated by the Court Shirestedar.

[R.M.SAVANT, J]