

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.11738 OF 2013

Mr. Khursheed Bano Islamuddin.	]	... Petitioner
Versus		
Viren Kamlakar Sao and Anr.	]	... Respondents

WITH

CIVIL WRIT PETITION NO.11739 OF 2013

Mr. Shakil Ahmed Jehruddin.	]	... Petitioner
Versus		
Viren Kamlakar Sao and Anr.	]	... Respondents

Mr. R. D. Mishra for Petitioners in both Writ Petitions.
 Mr. A. J. Jadhav for Respondent No.1 in both Writ Petitions.

CORAM :- M. S. SONAK, J.
DATE :- JUNE 29, 2015

P. C. :-

1. These two petitions can be disposed of by a common order. This is because the impugned orders in the two petitions, by which the respective Petitioners have not been granted leave to file their Written Statements, are virtually identical.

2. The delay in filing the Written Statement in both the cases is almost of over two years. The Petitioners claim to be sub-tenants of

the suit premises. The reason for the delay is that they had engaged the services of an Advocate, and the Advocate told the Petitioners that there was no need for them to appear in the Court and that as and when the matters will reach the stage of evidence, he shall duly intimate them about the same. The Petitioners have averred that their Advocate did not advise them of the requirement of filing any Written Statement and it is only when the Petitioners received a second summons did they realize that something was wrong in the matter. The Petitioners state that thereafter they changed their Advocate and applied to the Court for condonation of delay in filing Written Statements. By the impugned orders, the delay has not been condoned and the Petitioners have not been allowed to file their Written Statements.

3. The Petitioners have, no doubt, not been diligent in pursuing the matter. However, there are no circumstances which would indicate the Petitioners have acted malafide or that they have any interest in unduly protracting the matter. Record indeed indicates that the Petitioners have changed their Advocate and soon thereafter application came to be made seeking leave to file Written Statements. In these petitions, the Petitioners are in occupation of the suit premises. The learned trial Court has disbelieved that the Petitioners are illiterate persons merely because the Petitioners have put their signatures on the application/verification. This by itself, is no ground to reject the Petitioners' contention with regard to illiteracy. The lack of diligence on the part of the Petitioners, has no doubt occasioned

prejudice to the Respondents. However, this prejudice can always be compensated by substantially high costs. Besides, appropriate orders can be issued for expediting the hearing of the suits which even otherwise relate to the year 2009.

4. Therefore, upon cumulative consideration of all the material on record, the impugned orders are set aside subject to the Petitioners in each of the petition paying costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) each in favour of the Respondent No.1-landlord. Such costs to be deposited by the Petitioners before the trial Court within a period of two weeks from today. Upon deposit, the Respondent No.1-landlord shall be at liberty to withdraw the same unconditionally. The Respondent No.1-landlord is also granted liberty to file additional Affidavit in lieu of examination-in-chief within a period of four weeks from filing of Written Statements on record by the Petitioners. The Petitioners to file the Written Statements within a period of two weeks from today. Thereafter, the trial Court is directed to dispose of the suits as expeditiously as possible and in any case, within a period of one year from today.

5. Rule is made absolute to the aforesaid extent in both these petitions.

6. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)