

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

WRIT PETITION NO.572 OF 2015

Mohammed Yakub Haji Abdul Shakoor

.. Petitioner

Versus

Ejaj Ahmed Khan (since deceased)

Shakil Ahmed Khan and others

.. Respondents

Mr. V. K. Gupta, for the Petitioner.

Mr. V. R. Tripathi, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 14th OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 19.11.2014 passed by the Learned Judge of the City Civil and Sessions Court, Greater Bombay, by which order the Notice of Motion No.4445 of 2013 filed by the Defendants seeking extension of time to file their Written Statement and for the Written Statement to be taken on record came to be allowed albeit on the imposition of costs of Rs.10,000/- on the Defendants.

2. The suit was originally filed in this Court and bore High Court Suit No.6626 of 1999 which suit was filed for dissolution of the

Partnership and Accounts. It is an undisputed position that whilst the suit was pending in this Court, a number of interlocutory applications were filed. The parties were involved in prosecuting the said interlocutory applications and hence whilst the suit was in this Court, the original Defendant did not file his Written Statement. The original Defendant died in the year 2004 and his heirs who are shown as Defendant Nos.1(a) to 1(l) were brought on record. After the last interlocutory application was disposed of it seems that the suit was not listed before this Court either for directions regarding filing of the Written Statement or for passing of ex-parte decree under Order VIII Rule 10 of the Civil Procedure Code. In so far as the provisions of the Civil Procedure Code are concerned, they are not applicable to a suit filed on the Original Side of this Court and it is the Original Side rules which are applicable.

3. On the pecuniary jurisdiction of the City Civil Court being enhanced, the suit came to be transferred to the City Civil Court sometime in October 2012 and thereafter the suit appeared before the Learned Judge of the City Civil Court in the year 2013 thereafter the instant application was filed in March 2014. In the affidavit in support of the Motion, the grounds have been set out as to why the Written Statement could not be filed. It is stated that whilst the suit was pending in this Court, it had not come up for issuance of directions as regards the filing of

the Written Statement. It is further averred that the original Defendant died and the heirs were brought on record and lastly it is averred that the parties were involved in prosecution of interlocutory applications on account of which the Defendants did not file their Written Statement being preoccupied with the prosecution of the said interlocutory applications. The Trial Court considered the said Notice of Motion No.4445 of 2013 and has allowed the same by accepting the reasons mentioned by the Defendants who are the heirs of the original Defendant. The Trial Court has adverted to the fact that the provisions of the Civil Procedure Code were not applicable whilst the suit was pending on the Original Side of this Court. The Trial Court has also adverted to the factum of there being interlocutory proceedings between the parties. The Trial Court has thereafter allowed the application albeit on the imposition of costs of Rs.10,000/- on the Defendants. Having regard to the dictum that a party should be allowed to prosecute the proceedings on merits rather than being non-suited on technical grounds, the order passed by the Trial Court cannot be faulted with as it is always desirable that the Defendants are given an opportunity to put up their defence. For the prejudice if any or the inconvenience that is caused, the Trial Court has deemed it appropriate to impose costs of Rs.10,000/-, in my view, no interference is called for with the impugned order in the Writ Jurisdiction of this Court.

However, the Defendants to pay additional costs of Rs.5,000/- to the Petitioner within a period of four weeks from date. The same would be in addition to the costs of Rs.10,000/- already imposed by the Trial Court.

[R.M. SAVANT, J]