

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 729 OF 2016**

**MR. RAYMOND DE SA.,  
Aged 43 years, businessman,  
Resident of House No.907,  
Maddant, Cortalim, Goa.**

**... Petitioner**

**Versus**

**MR. JOHN PHILIP PEREIRA,  
Major in age, Resident of Nagoa,  
Verna, Salcette, Goa and  
5 ORS.**

**... Respondents**

Adv. Jagannath Jayant Mulgaonkar for the Petitioner.

Adv. Nigel Costa Frias for the Respondent no.1.

Adv. Gopal V. Tamba for Respondent no.6.

**Coram:- C. V. BHADANG, J.  
Date:- 13th October, 2016.**

**ORAL ORDER:**

The challenge in this petition at the instance of the petitioner, who is the original plaintiff is to the order dated 13/6/2016 passed by the Civil Judge, Margao, by which the application filed by the respondent no.1 (defendant no.1) for condonation of delay in filing the written statement, has been

allowed.

2. The brief facts are that the petitioner has filed a suit for damages on account of defamation against the respondents. The respondent no.1 ( who is a member of a NGO) had filed a complaint about alleged illegal construction of a dry dock by the petitioner. The suit was filed in the year 2012. Immediately after receipt of the summons the respondent no.1 filed an application under Order 7 Rule 10 of C.P.C for return of plaint on the ground of lack of territorial jurisdiction, while some other defendants had filed an application for rejection of plaint. It is undisputed that the application under Order 7 Rule 10 of C.P.C took about four years for being decided. The said application was dismissed on 9/1/2014. Thereafter the respondent filed an application on 3/7/2014 for condonation of delay in filing the written statement. The ground made out in the application apart from the pendency of the application for return of plaint is that there was a PIL No.10/2013 filed by the NGO and some of the co-defendants, which was pertaining to the alleged illegal construction of the dry dock undertaken by the

petitioner. That the petition (PIL) was admitted on 25/3/2014.

2. The learned trial Court by the impugned order has accepted the said grounds and has allowed the application.

3. It is contended by the learned counsel for the petitioner that mere pendency of an application for return of plaint cannot prevent the respondent from filing the written statement. It is submitted that even after the said application was decided, the application for condonation of delay is filed after about six months.

4. The learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Kailash Vs. Nanhku and Others** (2005) 4 SCC 480 and **Aditya Hotels (P) Ltd. Vs. Bombay Swadeshi Stores Ltd. and others** (2007) 14 SCC 431. Reliance is also placed on the decision of Allahabad High Court in the case of **Mohd. Kaisar Vs. Chabbili Devi** (2008) 5 ADJ 201. It is submitted that the such an extension can only be granted for exceptional

reasons where the defendant is prevented from circumstances beyond his control from filing the written statement. It is submitted that otherwise the time limit has to be adhered to strictly.

5. On the contrary it is submitted on behalf of the respondents that there were bonafide reasons for the respondents in as much as an application for return of the plaint was pending. It is submitted that the PIL which was filed concerning the alleged illegal construction of the dry dock was also pending and these reasons have rightly been accepted by the trial court, calling for no interference.

6. I have considered the circumstances and the submissions made. In the case of **Kailesh (supra)**, the Hon'ble Apex Court in para 42 has held thus :

“Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of

hearing without waiting for the arrival of the date appointed in the summons for his appearance in the court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

It can thus be seen that such a extension can be granted on the basis of exceptional circumstances occasioned by reasons beyond the control of the defendant and that such extension is required in the interest of justice, and grave injustice would be occasioned, if the time was not

extended.

7. In the case of **Aditya Hotels (supra)**, the order passed by the trial court and the High Court were cryptic and therefore placing reliance on the decision of **Kailesh (supra)**, the matter was remitted to the trial Court to consider the issue afresh in the light of the decision of **Kailesh (supra)**. It is true that mere pendency of the application for return of plaint could not have prevented the respondent from filing the written statement. However, it was not pointed out that when the application for return of plaint was pending consideration, the suit was also fixed for filing written statement of the defendant on the basis of roznamas in the suit. It is a fact that the application for return of plaint was pending before the trial court for about four years. The trial court has observed that no prejudice would be caused to the petitioner as they can contest the matter on merits and technicalities shall not obstruct the "path of justice". In the case of **Mohd. Kaisar** before the Allahabad High Court there was an Election petition in which an application for rejection of the plaint/petition was filed

under Order 7 Rule 11 CPC, which application was rejected. Thus the principle question therein was about the rejection of the petition, in which it was observed in para 13 of the judgment that it is not necessary for the defendant to wait until his application under Order 7 Rule 11 is decided to file the written statement. Thus the principle question was not about the extension of time order the condonation of delay in filing the written statement.

8. Coming back to the present case and considering the overall circumstances, I do not find any case for interference is made out.

9. It is now well settled that while exercising supervisory jurisdiction under Article 227 of the Constitution of India, unless and until the party demonstrates that the impugned order would result in any manifest injustice or prejudice, no interference is called for (see **Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil (2010) 8 SCC 329** ). It can well be argued that the condonation of delay is bound to cause prejudice to some extent to the petitioner, however,

on weighing the scales, it can certainly be said that if the delay is not condoned, the respondent would be entirely precluded from contesting the suit and on the contrary, if the delay is condoned the petitioner would still get an opportunity to contest the suit and establish his claim. On that ground also I am not inclined to interfere with the impugned order. The writ petition is accordingly dismissed with no order as to costs.

**C. V. BHADANG, J.**

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