

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4671/2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. N. P. Mule for the petitioner

CORAM : K. K. TATED, J.
DATE : JUNE 29, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner defendant No.1 challenges the order dated 25.01.2016 passed by the 6th Jt. Civil Judge, Junior Division Pune below Exhibit- 123 rejecting the application made by defendant No.1 to cancel the pursis Exhibit- 48.

2. In the present proceedings, the respondent plaintiff filed Regular Civil Suit No.1527/2004 for partition, separate possession and injunction in respect of the HUF property. In that suit, the defendant No.2 filed written statement. Thereafter the defendant No.1 filed pursis/application exhibit 48 dated 28.07.2006 adopting written statement filed by defendant no.1. Thereafter the defendant No.1 filed application below Exhibit-

123 on 10.08.2015 for cancellation of pursis/application below Exhibit- 48 allowing defendant No.1 to file written statement.

3. The learned counsel for the defendant No.1 submits that defendant No.2 by committing fraud, obtained his signature on pursis below Exhibit- 48. He submits that the defendant No.2, in written statement admitted the contention of the plaintiff. He submits that in fact the partition took place in the year 1985. Therefore, there is no question of seeking an order from the court for partition of HUF property. He submits that as the fraud is committed by defendant No.2 and obtained defendant No.1's signature on pursis Exhibit- 48, defendant No.1 made application below Exhibit- 123 for cancellation of the said pursis Exhibit- 48 and for allowing defendant No.1 to file his separate written statement.

4. The learned counsel for the defendant No.1 submits that the Trial Court erred in coming to the conclusion that the defendant No.1 has not made out any case for cancellation of pursis below Exhibit- 48. He submits that the court below rejected the defendant No.1's application only on the ground that there was delay of more than 9-10

years in filing the said application. He submits that the Trial Court has not considered the allegations made by the defendant No.1 in his application about the fraud committed by defendant No.2 for obtaining his signature on pursis below Exhibit- 48. Hence, the impugned order is liable to be set aside allowing defendant No.1 to file his written statement. He submits that if the petition is not allowed, irreparable loss and injury will be caused to the petitioner. He submits that he has good chance of success in the matter.

5. Heard the learned counsel for the petitioner at length. It is to be noted that in the present proceedings the defendant No.1 filed pursis below Exhibit- 48 on 20.07.2006. Thereafter he made application below Exhibit- 123 on 10.08.2015 i.e. more than 9 years. It is to be noted that as per Order VIII Rule 1 of the Code of Civil Procedure, 1908, written statement is to be filed within 30 days or extended period of 120 days. If the application filed by the defendant No.1 below Exhibit- 123 is allowed, that amounts to condonation of more than 9-10 years delay in filing the written statement. Apart from that the Trial Court specifically recorded that the matter was posted for judgment. This itself shows that

recording of evidence and hearing is over and at this stage the defendant No.1 made application below Exhibit- 123.

6. Considering the fact that there was delay of 9-10 years on the part of the defendant in making the application for setting aside the pursis Exhibit- 48 and now the matter is at the stage of judgment, I do not find any reason to interfere with the order passed by the Trial Court. Hence, the Writ Petition stands rejected.

JUDGE