

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

WRIT PETITION NO.12764 OF 2016
WITH
WRIT PETITION NO.7529 OF 2016

Shri Shivaji Popat Aaher & Ors.

.. Petitioners

vs.

Shri Subhash Vitthal Dhole & Ors.

.. Respondents

Mr.Girish R. Agrawal for the petitioner in both the Writ Petitions

Mr.Sandeep R. Shinde for the respondent in both the Writ Petitions

CORAM : K. K. TATED, J.
DATE : DECEMBER 7, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 226 and 227 of the Constitution of India the Petitioners original defendants challenges the order passed by Trial Court rejecting defendant's application for condonation of delay in filing the written statement.

3 The learned counsel for the petitioners submits that they preferred application for condonation of delay in filing written statement before the Trial Court stating that defendants were under the impression that the written statement was already filed by them. He

submits that when the defendants took search of the papers and proceedings of the matter, they learnt that the same was not filed. Hence, they immediately instructed their advocate to take steps. In this process there was delay on their part to file written statement. He submits that because of mistake on the part of advocate litigant should not suffer. He submits that if delay in filing written statement is not condoned, irreparable loss will be caused to the petitioner. He submits that petitioner has good chance of success in the present proceeding. He submits that in the interest of Justice, this Hon'ble Court be pleased to allow the present Writ Petition to set aside the impugned order passed by Trial Court allowing the petitioner to file written statement.

4 The learned Counsel for the petitioners submit that petitioners are ready and willing to pay total cost of Rs.50,000/- to the respondent plaintiff. To that effect advocate for the petitioner has given in writing that he received instruction from their client that they are ready and willing to pay total cost of Rs.50,000/- to the plaintiff i.e. Rs.25,000/- in each matter. The same is taken on record and marked 'X' respectively in both the matters for identification.

5 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the present Writ Petition. He submits that the petitioners failed to disclose the inordinate delay of more than 6 months 15 days in filing the written statement. He submits that even defendant has not disclosed why there was delay in filing the written statement in their application for condonation of delay. He further submits that the plaintiff's evidence is already over and the Trial Court has passed order 'no cross by the defendant'. Hence, there is no question of allowing the present Writ Petition.

6 It is to be noted that in the present proceeding because of mistake on the part of advocate it remained on the part of defendant to file written statement within time. They were under the impression that their advocate must have filed written statement on the basis of information provided by them. When the defendant took search of the record and proceeding they learnt that the written statement was not filed by their advocate within stipulated time. Because of mistake on the part of advocate litigant should not suffer. Apart from that, advocate for the petitioner gave in writing that the petitioners are ready and willing to pay cost of Rs.50,000/- to the respondent plaintiff i.e. Rs.25,000/- in each matter.

7 The Apex Court in the matter of **Smt.Lachi Tewari and others vs. Director of Land Records and Others, 1984 (Supp.) SCC 431** held that because of mistake on the part of the advocate, a litigant should not suffer.

8 Considering the above mentioned facts and the law declared by the Apex Court, I am satisfied that the petitioner has made out a case for allowing the present Writ Petition on payment of cost. Hence, following order is passed:

- a) Impugned order dated 16.1.2016 passed by Trial Court rejecting the petitioner's application below Exhibit- 17 and 19 in both the matter is set aside.
- b) Delay in filing the written statement in both the Writ Petitions condoned.
- c) Petitioner to file written statement on or before 25.1.2017 with copy to other side.

- d) Petitioner to pay cost of Rs.25,000/- in each matter to the respondent or their advocate on or before 6.1.2017 and intimate to the Registry of this court, failing which both the Writ Petitions shall stand dismissed without referring back to the court.
- e) “No cross order” passed by Trial Court is set aside.
- f) If written statement is filed within stipulated time as stated hereinabove, Trial Court is directed to allow the petitioner to take cross-examination of plaintiff.
- g) Both the Writ Petition stands disposed of.

JUDGE