

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

WRIT PETITION NO.7322 OF 2016

Shri Punaji Ramji Gavali and Anr. .. Petitioner

vs.

Shri Devram Khandu Wagh and Ors. .. Respondents

Mr.Girish R. Agrawal for the petitioners

Mr.R.N.Gite for the respondent no.1

CORAM : K. K. TATED, J.
DATE : AUGUST 12, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner defendant no.1 and 2 challenges the order dated 29.10.2014, 5.11.2014 and 13.1.2016 passed by Civil Judge, Junior Division, Dindori in Regular Civil Suit No. 54 of 2007 rejecting defendant's application for filing additional written statement.

3 In the present proceeding, respondent plaintiff's application for carrying out amendment in Regular Civil Suit No. 54 of 2007 was allowed, but amended copy was not placed on record. Thereafter, from time to time, matter appeared on board. On 18.7.2012 no one appeared on behalf of respondent plaintiff. Hence, the Trial Court kept

the suit for dismissal on 25.7.2012. On 25.7.2012 plaintiff appeared and filed his amended copy of plaint and served on the other side. On that date, the Trial Court directed petitioner defendant to file their additional written statement on or before 5.9.2012 and the matter was adjourned to 26.9.2012. As the defendant failed to file his additional written statement on or before 5.9.2012, Trial Court passed order of no additional written statement and matter to proceed for framing additional issues. Thereafter, defendant filed application below Exhibit-58 for setting aside the order dated 5.9.2012 and for filing additional written statement. On that application respondent plaintiff granted no objection subject to payment of cost of Rs.150/-. As the defendant failed to pay cost of Rs.150/- within stipulated time, defendant preferred application below Exhibit-62 for extension of time to pay cost and to file additional written statement. That application was rejected by the Trial Court by order dated 5.11.2014. Thereafter, defendant preferred application below Exhibit-63 for setting aside no additional written statement order and permission to pay cost and file additional written statement. That application below Exhibit-63 was rejected by the Trial Court on 2.9.2015 with liberty to file fresh application. Pursuant to the said liberty granted by Trial Court by order dated 2.9.2015 defendant preferred application below Exhibit- 65 on 23.9.2015 for setting aside no additional written statement order and allowing the defendant to file additional written statement and pay cost of Rs.250/-. In that application, the defendant made a prayer for setting aside earlier order dated 5.9.2012 allowing the defendant to file their amended written statement. The Trial Court by order dated 13.1.2016 rejected defendant's application below Exhibit-65 on the ground that earlier the defendant preferred application below Exhibit-58 and 63 for same cause of action and same were discussed by the

Trial Court. Hence, the present Writ Petition.

4 The learned counsel for the defendant submits that the defendants are uneducated persons. For want of knowledge it remained on their part to take appropriate steps to comply the order passed by Trial Court on 25.7.2012. He submits that in the interest of Justice, this Hon'ble Court be pleased to allow the defendants to file their additional written statement to contest the suit. He submits that if present Writ Petition is not allowed, irreparable loss and injury will be caused to the defendants. He submits that defendants have good chance of success in the suit filed by the respondent plaintiff.

5 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the present Writ Petition. He submits that defendant failed and neglected to comply with the order dated 25.7.2012 by which the Trial Court granted time to the defendant to file their additional written statement on or before 5.9.2012. He submits that thereafter defendant filed application below Exhibit- 58 after nearabout one year on 1.9.2013 for extention of time to file written statement. He submits that on that application below Exhibit- 58 plaintiff has given no objection on payment of cost of Rs.150/-. Considering the no objection given by plaintiff the Trial Court allowed the defendant to file their additional written statement. Inspite of that the defendant failed and neglected to deposit the cost within stipulated time. He submits that though the Trial Court passed order on 5.9.2012 of no additional written statement, because of defendants' several applications, matter was dragged for more than 3 years. He submits that because of negligence on the part of defendant, plaintiff should not suffer. He submits that there is no substance in the present Writ

Petition and same be dismissed with costs.

6 I have heard both the sides. It is to be noted that earlier when the plaintiff carried out amendment in their plaint, as per order dated 14.3.2012 passed by Trial Court below Exhibit-55, he failed to provide amended copy of plaint to the defendant. When the matter was on board on 18.7.2012, no one appeared on behalf of plaintiff. Hence, the Trial Court kept the matter for dismissal on 20.7.2012. When the matter was kept for dismissal, plaintiff appeared and provided amended copy of plaint to the defendant. At that time, the court granted time till 5.9.2012 to the defendant to file their amended copy of written statement. Defendant in their application dated 29.10.2014 below Exhibit-62 specifically made a statement that they are uneducated and they do not have any knowledge about the law. Apart from that by mistake it remained on their part to deposit sum of Rs.150/- in the court by way of cost.

7 It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each

remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, 1969 SC 575 and *State of West Bengal v. The Administrator, Howrah Municipality*, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

8 Considering the application filed by defendant below Exhibit-62 dated 29.10.2014 and the subsequent orders passed by Trial Court rejecting defendant's application for extension of time to file amended written statement and payment of cost and the law declared by the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy***, I

am of the opinion that defendants have made out a case for allowing this Writ Petition.

9 Hence, following order is passed:

A) Writ Petition is allowed in terms of prayer clause (b), (c),(d) and (e), which reads thus:

“(b) This Hon'ble Court be pleased to quash and set aside the impugned order dated 29/10/2014 passed in Regular Civil Suit No.54 of 2007 by Civil Judge, Junior Division, Dindori.

(c) This Hon'ble Court be pleased to quash and set aside the impugned order dated 5/11/2014 passed below Exh-62 in Regular Civil Suit No.54 of 2007 by Civil Judge, Junior Division, Dindori.

(d) This Hon'ble Court be pleased to quash and set aside the impugned order dated 13/10/2016 passed below Exh-65 in Regular Civil Suit No.54 of 2007 by Civil Judge, Junior Division, Dindori.

(e) This Hon'ble Court be pleased to allow the applications at Exh-62 & 65 in Regular Civil Suit No.65 of 2007.”

B) Defendant to file their additional written statement within four weeks from today and provide copy to the other side, failing which Writ Petition shall stand dismissed without referring back to the court.

C) Defendant either to pay cost of Rs.2500/- to the respondent petitioner directly or to deposit the said cost in the Trial Court within four weeks from today, failing which Writ Petition shall stand dismissed without referring back to the court.

D) Hearing of Regular Civil Suit No. 54 of 2007 is expedited.

JUDGE