

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9959 OF 2016

Bank of India ... Petitioner
Vs.
Anil Gidharlal Desai and others ... Respondents

Mr. Shardul Singh a/w. Ms Hemakshi Gandhi and Ms Pooja K. i/b. Nahush Shah Legal for Petitioner.

Mr. Bipin Joshi a/w. Mr. Prayag Joshi for Respondents.

CORAM : R. G. KETKAR, J.

DATE : AUGUST 25, 2016

P.C. :

Not on Board. At the request of Mr. Singh, taken up for admission.

2. Heard Mr. Singh, learned Counsel for petitioner and Mr. Joshi, learned Counsel for respondents at length.

3. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the judgment and order dated 18.04.2016 passed by the learned Judge, presiding over Court Room No.23 of the Court of Small Causes at Mumbai below exhibit-19 in T.E.&R. Suit No.34 of 2015. By that order, the learned trial Judge rejected the application taken out by the defendant No.1 under Order 8, Rule 1 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') praying to take written statement on record, presented after 90 days from the date of service of summons. The learned trial Judge considered the explanation given in paragraph 11 of the application and observed that the grounds of internal audit, administrative reasons, inadvertence, etc. cannot be said to be sufficient, which prevented the defendant No.1 from filing the written statement,

particularly in the circumstances, when the defendant No.1 was regularly appearing in the Court and contesting the interim relief application.

4. After arguing the Petition for quite some time, Mr. Singh, upon taking instructions from the petitioner, seeks permission to withdraw this Petition with liberty to file fresh application for the reliefs claimed in application exhibit-19. He further states that within one week from today, he will file application and serve copy during this period on the other side. Mr. Joshi states that in case liberty is granted, all contentions of the respondents may be kept open and the application may be directed to be disposed of in a time bound manner. He assures that within one week from service of the application, he will file reply and serve copy in advance during this period on the other side.

5. In view thereof, on the motion made by Mr. Singh, Petition is allowed to be withdrawn with liberty as prayed for. It is made clear that in case fresh application is filed giving sufficient reasons, the trial Court will decide the same uninfluenced by the observations made in the impugned order. However, if the trial Court finds that no sufficient cause is made out, it will pass appropriate order in the light of the impugned order. Application shall be disposed of within four weeks from completion of replies. All contentions of the parties, on merits, are expressly kept open. Order accordingly. Petition disposed of.

(R. G. KETKAR, J.)