

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5141 OF 2016

The Municipal Corporation and another ... Petitioners
Vs.
Rajendra Baban Korgaonkar ... Respondent

Mr. Vinod Mahadik i/b. Ms U. H. Deshpande for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : JULY 11, 2016

P.C. :

Heard Mr. Mahadik, learned Counsel for petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 13.04.2015 passed by the learned Judge, presiding over Court Room No.7 of the Court of Small Causes at Mumbai below exhibit-11 in R.A.E.Suit No.817 of 2014. By that order, the learned trial Judge allowed the application filed by the petitioners for condoning the delay caused in filing the written statement subject to cost of Rs.15,000/- as a condition precedent. The learned trial Judge directed the petitioners to pay the cost to Bar Library on or before the next date. It was made clear that if the cost is not paid on or before the next date, the matter would proceed further in accordance with law.

3. Mr. Mahadik strenuously contended that having regard to the fact that there was delay of 177 days in filing the written statement and as the written statement is filed along with the application for condoning the delay, the learned trial Judge was not justified in imposing the costs of Rs.15,000/-.

4. I do not find any merit in this submission. It is not in dispute that there is delay of 177 days in filing the application for taking written statement on record. The learned trial Judge has allowed the application subject to costs of Rs.15,000/-, which is to be paid to the Bar Library. The impugned order is purely discretionary order and hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

5. At this stage, Mr. Mahadik prays for four weeks time to pay the costs to the Bar Library.

6. In view thereof, notwithstanding dismissal of the Petition, time for paying the costs is extended by four weeks from today. It is further made clear that no application for extension of time for paying the costs shall be entertained. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab