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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) No. 899 OF 2015
IN
NOTICE OF MOTION No. 1212 OF 2015
IN
SUMMARY SUIT No. 4870 OF 1999
WITH
NOTICE OF MOTION (L) No. 3324 OF 2015

M/s. Shree Siddhivinayak
Developers and Ors. ... Appellants / Applicants
Vs.
Kimaya Wellness Ltd. (Previously
known as Saraldish Investment Ltd.)... Respondents

Mr. Rajendra Desai a/w Aliabbass Delhiwala, Neeraj Patil i/b Divya
Shah Associates, for the Appellants / Applicants.

Mr. Mayur Khandeparkar a/w Sharmila Deshmukh and Ms. Rupali
Dixit, for the Respondents.

CORAM : V. M. KANADE, &
REVATI MOHITE-DERE, JJ.

DATE : JANUARY 6, 2016

PC.

1. The Appellants have filed this appeal, challenging the
order passed by the learned Single Judge in Notice of Motion No.
1212 of 2015, dated 28th October, 2015, taken out by the original
Defendants.

2. Brief facts, for the purpose of deciding the appeal, are as under:

. The Respondents herein filed a summary suit against the Appellants, on account of dishonour of 37-40 cheques, which were given by the Appellants in favour of the Respondents. The Respondents took out summons for judgment in the said summary suit. However, the learned Single Judge vide order dated 16th March, 2002 was pleased to grant unconditional leave to defend.

3. The Appellants did not file written-statement. The matter came up on board on 29.1.2015. The Appellants, however, were not present when the matter was called up. Since no written-statement was filed, the learned Single Judge was pleased to order that the suit should be placed for passing the exparte decree.

4. The Appellants, thereafter, took out notice of motion, seeking condonation of delay of 13 years caused in filing the written-statement. Affidavit in reply was filed by the Respondents opposing the reliefs claimed by the Appellants / Applicants, herein. The learned Single Judge dismissed the notice of motion and did not grant time to file the written-statement. Against the said order, present appeal has been filed seeking to condone the delay and to take the written-

statement on record.

5. The learned counsel appearing on behalf of the Appellants submitted that the learned Single Judge had the power to condone the delay under the Original Side Rules and to permit the Appellants / Defendants to file the written-statement and take it on record. He submitted that under the Original Side Rules, Court had authority to extend the time to file the written-statement. He submitted that the Appellants had explained the delay caused in filing the written-statement. He further invited our attention to the judgment of the Division Bench of this Court in the case of ***Bitesh Hanumantrao Sagar, Appellants Vs. Virginia Anthony Misquitta, Respondent*** (Appeal No. 329 of 2011, dated 21.3.2012). He submitted that in the said case also there was a delay in filing the written-statement and the Division Bench after relying on Original Side Rules, had permitted the Appellant to file written-statement. The learned counsel appearing on behalf of the Appellants submitted that costs should have been imposed for not filing the written-statement in time. He submitted that the suit appeared on board almost after 13 years and inadvertently written-statement could not be filed, though it

was ready. He submitted that in fact in the summons for judgment, which was taken out by the Respondents, the Appellants had filed their reply and their defence was, therefore, disclosed in the said reply itself. He submitted that no prejudice would be caused to the Respondents if the written-statement is taken on record.

6. On the other hand, learned counsel appearing on behalf of the Respondents submitted that there was a gross and unexplained delay in filing the written-statement. He submitted that it was a deliberate attempt to protract the proceedings. He also pointed out that a summary suit was filed on account of dishonour of cheques given by the Appellants. He submitted that in the criminal proceeding, which was taken out by the Respondents, the Appellants had been convicted and appeal against that order was pending in the Court. He submitted that at every stage an attempt was made to protract the proceeding. He submitted that the Respondents had booked their flat with the Appellants and when building was not constructed the Respondents had filed the suit for recovery of the amount of dishonoured cheques and compensation. He submitted that, however, though a Court Receiver was appointed, the Appellants had created third party rights. He submitted that the learned Single Judge after

relying on the recent of the judgment of the Apex Court has refused to entertain the notice of motion of the Appellants, and the learned Single Judge has observed that the application for condonation of delay was not bona fide and intention of the Appellants was to protract the proceeding.

7. In our opinion, there is much substance in the submissions of the learned counsel appearing on behalf of the Respondents. We have perused the impugned order. The learned Single Judge has taken into account all aspects of the case and has observed that the Appellants were not entitled to get benefit of condoning the delay, caused in filing the written-statement, on account of his conduct. We are satisfied with the reasons given by the learned Single Judge in not entertaining the application filed by the Appellants herein. The learned Single Judge has given cogent reasons while dismissing the motion for condonation of delay caused in filing the written-statement.

8. Though it is true that the principle laid down by the Division Bench of this Court that the Original Side Rules have been framed by the High Court and they can be applied to the facts of the present case, we are of the view that it cannot be forgotten that the

Court can, in a given case, refuse to exercise the discretion vested in him and refuse to condone the delay, caused in filing the written-statement in the present case when such a delay is of almost 13 years. The written-statement was, in fact, ready and should have been filed much earlier. The record and proceedings indicates that the Appellants were diligent in contesting every application in the suit. If that was the position, there was no reason why written-statement was not filed in time. It is clearly shown that intention of the Appellants was to protract the proceedings.

9. Under these circumstances, we are not inclined to interfere with the order passed by the learned Single Judge. Appeal is, therefore, dismissed. At this stage, learned counsel appearing on behalf of the Appellants seeks continuation of the interim order. Request for continuation of the interim order is declined.

10. In view of disposal of the appeal, Notice of Motion (L) No. 3324 of 2015 taken out therein does not survive and is accordingly disposed of.

Sd/-
[REVATI MOHITE-DERE, J.]

Sd/-
[V. M. KANADE, J.]