

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.851 OF 2016

Sharad Dadasaheb Pawar,
Age-40 years, Occu-Business,
R/o Geetanjali Niwas,
Arogya Nagar, Latur

-- PETITIONER

VERSUS

1. Shaikh Anwar Hanif,
Age-46 years, Occu-Business,
R/o Kalamb, Tq.Kalamb, Dist.Osmanabad,

2. Arun Sandipan Favde,
Age-47 years, Occu-Service,
R/o Kalamb, Tq.Kalamb, Dist.Osmanabad,

3. Panjabrao Namdeorao Dhepe,
Age-44 years, Occu-Contractor,
R/o Kalamb, Tq.Kalamb, Dist.Osmanabad,

4. Lalita Gopalrao Ghotale,
Age-47 years, Occu-Service,
R/o Maharashtra Co-operative Housing,
Society, Barshi Road, Latur

-- RESPONDENTS

Mr.R.P.Adgaonkar, Advocate for the petitioner.
Mr.V.S.Undre, Advocate for respondent Nos.1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 20/06/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2. The petitioner is aggrieved by the order dated 19/12/2015 vide which the Trial Court has rejected application Exh.38 in Spl.C.S.No.29/2015 by which the prayer of the petitioner/defendant, seeking recalling of 'no written statement' order and leave to file the written statement, has been rejected.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. Learned Advocate for the respondents has strenuously opposed this petition and prays for its dismissal. In the alternative, he prays that heavy costs may be imposed on the petitioner.

3. The record reveals that the petitioner/defendant appeared in the suit on 24/04/2015. The suit was filed for Specific Performance of Contract in relation to 3 flats. On 30/06/2015, the Trial Court passed 'no written statement' order. On 08/12/2015, the petitioner has moved application Exh.38 for seeking leave to file the written statement, condonation of delay and for recalling of the 'no written statement' order.

4. The Trial Court has rejected Exh.38 on the ground that costs were imposed on the petitioner/defendant No.1 while granting an

adjournment. Yet, the defendant was seeking adjournments. Hence, the 'no written statement' order was passed. After almost 5 months after the 'no written statement' order, the defendant filed an application for recalling 'no written statement' order and praying for condonation of delay.

5. It appears that the petitioner, who is defendant No.1, is a builder and a developer in partnership with defendant No.2. Despite huge amounts having been deposited and 3 flats having been purchased by the 3 plaintiffs, they were compelled to file a suit for specific performance and for seeking possession of the 3 flats. The element of intentional delay cannot be ruled out, notwithstanding the fact that the suit would proceed unchallenged if the petitioner is not permitted to file the written statement.

6. In the interest of justice and considering the comparative hardships, I find that this petition deserves to be partly allowed by imposing costs for the delay of 2 years caused in the trial by the petitioner.

7. This petition is, therefore, partly allowed. The impugned order dated 19/12/2015 is quashed and set aside and application Exh.38

is partly allowed on the following conditions :-

[a] As the petitioner has already deposited Rs.4,000/- in this Court under order dated 25/01/2016, pursuant to which the suit has been stayed, the petitioner shall deposit an amount of Rs.26,000/- before the Trial Court on or before 21/07/2017, failing which this order shall stand recalled and the 'no written statement order' shall stand restored.

[b] Respondent No.1 can withdraw an amount of Rs.4,000/- alongwith interest from this Court without conditions and thereafter he shall withdraw Rs.6,000/- from the Trial Court. Similarly, respondent Nos. 2 and 3 herein shall withdraw an amount of Rs.10,000/- each from the Trial Court without conditions.

[c] The petitioner shall file his written statement on or before 21/07/2017, failing which, he shall not be permitted to file a written statement and considering the earlier conduct, the Trial Court shall strike off his defence.

[d] After the pleadings are complete, the Trial Court to proceed with the suit and defendant No.1 as well as defendant No.2 who are partners to the firm, would be precluded from seeking adjournments on unreasonable and trivial grounds and the Trial Court would be at liberty to impose costs, if it deems it necessary.

8. Rule made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)