

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6111 OF 2017
(Dastgir Ahemadsab Shirure Vs. Ahemadsab Shirure and others)

Mr.C.D.Biradar, learned counsel for the petitioner.
Mr.M.B.Bharaswadkar, learned AGP for the respondents.

(CORAM : M.S.Sanklecha, J.)

DATE : 04/05/2017

PER COURT :

1. This petition challenges the order dated 06/12/2016 passed by the Civil Judge, J.D. The impugned order rejects the petitioner's application for filing a written statement beyond the time prescribed under Order 8 Rule 1 of the Civil Procedure Code, 1908 (CPC) including the proviso thereto. This was on account of non-acceptance of the reasons for the delay as urged by the petitioner viz. was unwell and talks of compromise were taking place between the respondents and himself.

2. The impugned order records that the suit was filed in 2007. It further records the fact that on 24/01/2008, an order was passed stating that the suit to proceed further without written statement of the petitioner. It further records that the contention of the petitioner that he was unwell stands falsified by the fact that the roznama

reveals that the petitioner was personally attending the Court on every date i.e. over 30 dates including when the issues were framed. Therefore, the impugned order does not accept the submission made on behalf of the petitioner that he was unwell. Further so far as talks for compromise is concerned, the impugned order reveals that no particulars were provided in the application as to what was the nature of compromise talks, between the parties which prevented him from filing the written statement. In the aforesaid circumstances, the impugned order holds that the circumstances made out by the petitioner are not such as would warrant accepting the written statement beyond the time prescribed in Order 8 Rule 1 of the CPC.

3. Mr.Biradar, learned counsel appearing for the petitioner submits that Order 8 Rule 1 of the CPC is merely a procedural provision, therefore the same should not come in the way of doing justice between the parties. In the above view, it is submitted that on costs being imposed, the written statement should be taken on record. In support, he relies upon the decision of the Supreme Court in Sandeep Thapar Vs. SME Technologies Private Limited [AIR 2014 SC 897].

4, The decision of the Apex Court in Sandeep Thapar (supra),

relied upon by the petitioner would have no application to the facts of the present case as the Supreme Court in that very decision has observed that Order 8 Rule 1 of the CPC has been brought into the statute keeping in view the need for expeditious trial of the civil causes. Therefore the Court states that ordinarily the time schedule contained in the provision i.e. Order 8 of the CPC should be followed and the departure therefrom would be only by way of exception. However, in the facts before the Supreme Court, the Court was satisfied that the reasons made out by the defendants therein for extension of time to file the written statement were exceptional warranting an extension of time. In fact, from the above decision, it is very clear that even though Order 8 Rule 1 of the CPC is procedural, the time schedule contained therein must be adhered to and is binding upon the defendant. However, the Court, may in exceptional circumstances, extend the time to file the written statement.

5. In the present facts, the impugned order has very elaborately recorded that no exceptional cause has been made out by the petitioner, warranting acceptance of the written statement beyond the time provided in Order 8 Rule 1 of the CPC. The application made so late by the petitioner in the context of the facts recorded in the impugned order and after the trial has begun is only to harass and

prolong the suit.

6. In the above view, there is no justification to interfere with the impugned order under Article 227 of the Constitution of India. Accordingly, petition is dismissed. No order as to costs.

(M.S.Sanklecha, J.)