

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5057 OF 2017

VISHWANATH RANGNATH GHAR
VERSUS
M/S LORD VENKATESHWARA ESTATE AND ORS

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Advocate for Petitioner : Smt. Dube Anjali (Bajpai)

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 06, 2017
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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the order dated 2.12.2016, by which, the trial Court has allowed application Exhibit 38 and has permitted defendant Nos.1 and 3 to file their written statement in the matter. Costs of Rs.2500/- has been imposed to be paid to the plaintiff.

2. Learned Advocate for the petitioner has strenuously criticized the impugned order. The twelve grounds set out in the memo of the petition are cited. It is further contended that the plaintiff had also filed his affidavit in lieu of examination-in-chief and defendant Nos.1 and 3 have been permitted to file their written statement thereafter.

3. It is further canvassed that defendant No.1 is a practicing

Advocate and he is in the business of building and construction also. He is expected to know the entire provisions of law and hence failure to file a written statement is inexcusable. It is then submitted in the alternative that costs of Rs.2,50,000/- should have been imposed on defendant Nos.1 and 3.

4. I have considered the submissions of the learned Advocate and have gone through the petition paper book.

5. The suit preferred by the petitioner is for specific performance and for damages. The suit property involves a land which is meant for a construction of a residential complex, out of which, 40% is to be handed over to the petitioner / plaintiff.

6. Defendant No.1 appeared in the trial Court on 16.1.2015 and defendant No.3 appeared on 26.3.2015. An order to proceed ex-parte as against these two defendants was passed on 18.12.2015. Application Exhibit 38 seeking leave to file a written statement and for recalling of the order was filed on 26.10.2016.

7. The Honourable Apex Court has considered similar aspects in various cases and has concluded that though the trial Court or the concerned Court can enlarge the limitation period

under Order VIII Rule 1 of the CPC for filing of a written statement, such liberty to file the written statement after the period prescribed is over, is not to be granted casually or mechanically. While granting liberty to file a written statement, the subject matter of the suit also has to be considered.

9. It is specifically stated in Exhibit 38 by the said defendants that the parties were negotiating for a settlement of the dispute so that the suit could be disposed off amicably. The defendants are builders and developers, besides defendant No.1 being a practicing Advocate as per the contention of the petitioner. Residential houses on a land happen to be the suit property. If the right to file a written statement is taken away, these defendants would practically become defenseless in the said suit.

10. After the order to proceed ex-parte was passed on 18.12.2015, the concerned defendants approached the Court with Exhibit 38 after about ten months. No doubt the plaintiff has been subjected to hardships on account of the said delay of about ten months. However, the said period cannot be termed as being an inordinate delay, which could never be condoned. Costs of Rs.2,500/- has been imposed on the said defendants and after the impugned order was passed, their written statement has

already been taken on record in December 2016.

11. Taking an over all view of the matter, I do not find that the impugned order could be termed as being perverse or erroneous or likely to cause gross injustice to the petitioner. In fact, it aims at meeting the ends of justice, by which the defendants have been allowed to file their written statement.

12. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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