

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 716 OF 2015

Ravindra Sudhakar Ghadge

.. **Petitioner**

Versus

Shivdas Santram Gavhane

.. **Respondent**

Shri M. S. Indani h/f Shri Umesh M. Indani, Advocate for the Petitioner.

Shri Girish K. Thigale (Naik), Advocate for the Respondent / Sole.

CORAM : S. V. GANGAPURWALA, J.

DATE : 14th December, 2017

PER COURT :

1. The application for setting aside no written statement order filed by the defendant is allowed. Aggrieved thereby the present petition.

2. Mr. Indani, learned advocate for the petitioner strenuously contends that written statement is filed by the defendant after 793 days. No sufficient cause is stated by the defendant for not filing the written statement within 90 day's. Only pendency of the application under Section 10 of Civil Procedure Code, 1908 would not be the ground available to the defendant for not filing the written statement. The time to file written statement can

only be granted on sufficient cause being shown. As no sufficient cause is shown, the application for setting aside no written statement order ought to have been rejected. The learned advocate relies on the Judgment of the Division Bench of this court in a case of **Chintaman Sukhdeo Kaklij and others Vs. Shivaji Bhausahab Gadhe and others**, reported in **2004 (4) Mh. L. J. 739** and another Judgment of the learned Single Judge of this court in a case of **Jerry Alex Brag Anza and Jeronimo Oriculo Alex Braganza Vs. Rajeshree and Rayeshrie Ramdas Borkar**, reported in **2003 (4) Mh. L. J. 1034**.

3. Mr. Thigale, learned advocate for the respondent supports the order.

4. It appears that the defendant had filed a suit for specific performance of contract. The suit was dismissed. The defendant has filed appeal against the said decree and the appeal is pending. In the interregnum after the decision of the trial court dismissing the suit for specific performance filed by the defendant the plaintiff herein filed the suit for recovery of possession. In the said suit upon summons being served the defendant filed an application under Section 10 of the Civil Procedure Code, 1908. The application under Section 10 of the C.P.C. was being heard by the learned trial Judge. It is stated that even the arguments under Section 10 of C.P.C. were concluded however before the order could be passed the learned

Judge who had heard the matter met with an accident and passed away. Thereafter the arguments on an application under Section 10 of the C.P.C. were required to be heard afresh by the new Judge. The defendant sought adjournment to argue the application under Section 10 of the C.P.C. and when the court did not accept the request of the defendant to adjourn the matter for hearing on an application under Section 10 of the C.P.C. the defendant filed the written statement alongwith application for setting aside no written statement order.

5. It would appear that the parties were under the impression that application under Section 10 would be decided earlier and thereafter depending upon the order passed on an application under Section 10 of C.P.C. further steps would be taken. It is also not disputed that the arguments were heard on an application under Section 10 of C.P.C. and the court had reserved the matter for orders on an application under Section 10 of C.P.C. Unfortunately, the learned Judge met with an accident and passed away and thereafter the matter was taken up by the new Judge. The written statement was filed alongwith application for setting aside no written statement order.

6. There is no dispute with the proposition that the time to file written statement can be extended upon the sufficient cause being shown by the defendant, as held by the Division Bench of the court in a case of Chintaman Sukhdeo Kaklij and others Vs.

Shivaji Bhausaheb Gadhe and others, so also another Judgment of the learned Single Judge of this court in a case of Jerry Alex Brag Anza, Jeronimo Oriculo Alex Braganza Vs. Rajeshree and Rayeshrie Ramdas Borkar, referred to supra. Considering the fact that the defendant was under bonafide belief that first order would be passed in an application under Section 10 of C.P.C. the written statement was not filed and the said reason is accepted by the learned trial Judge. The trial Judge has exercised his discretion in a reasonable manner. The suit is substantive suit for recovery of possession. Appeal against the judgment delivered in a suit for specific performance filed by the defendant is pending. So as to have the adjudication on merits and also considering the aforesaid reason the acceptance of written statement was proper.

7. In light of above, I am not inclined to exercise my jurisdiction under Article 227 of the Constitution of India.

8. The writ petition as such is dismissed. No costs.

[S. V. GANGAPURWALA, J.]

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