

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3544 OF 2016

Shree Ganesh Krupa Constructions

..Petitioner.

Vs

Shri Simon Alex D'Souza

.. Respondent

Mr. M.S.Lad, Advocate for Petitioner.

Mr.R.S.Ghadge i/b Laxman G. Waigankar, Advocate for
Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 19/01/2017

PC:

1. Heard Mr. M.S.Lad, learned counsel for the petitioner and
Mr. R.S.Ghadge, learned counsel for respondent no.1 at length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioner has challenged the Judgment and order
dated 12.1.2016 passed by the learned Judge, City Civil Court
Greater Mumbai in Notice of Motion No.3430 of 2015 in S.C.Suit
No.3447 of 2002. By that order, the learned trial Judge
dismissed the Motion taken out by defendants no.1 and 3 for
condoning the delay in filing written statement and taking it on
record.

3. In support of this petition, Mr.Lad submitted that on
5.1.2013 the learned trial Judge after noting that the defendants
have not filed written statement, directed the suit to proceed
without written statement. He submitted that in October, 2009

defendants no.1 and 3 changed their Advocate and handed over proceedings to Advocate Mr. P.P. Kakade with NOC. However, their advocate Mr. Kakade did not attend the matter and used to send his junior Advocates without proper instruction but did not file the written statement. Mr.Kakade should have filed written statement even before the order of no written statement is passed. However, on account of his negligence, defendants no.1 and 3 could not file the written statement in time and the suit proceeded exparte. He submitted that there is delay of 2 years and 7 months and defendants no.1 and 3 should not suffer because of mistake of their Advocates in not filing written statement. He relied upon the following decisions:

1. Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353;
2. Collector, Land Acquisition, Anantnag vs. Mst. Katiji, AIR 1987 SC 1353;
3. Sonabai Kerappa Katkar Vs. Mohamad Jilani Mohd Washid Shaikh, 2008 (6) ALL MR 323 -
4. On the other hand, Mr. Ghadge supported the impugned order. He invited my attention to paragraphs 4 and 5 of the impugned order and submitted that no case is made out for interfering with the impugned order.
5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused

the material on record. Perusal of the record shows that the suit is instituted in the year 2008 on the Original Side of this Court. Defendants no.1 and 3 were represented by present Advocate as is evident from the orders passed by this Court on 14.9.2009, 18.3.2010. In the year 2012, the suit was transferred to the City Civil Court and was on board on 23.10.2012. On 20.11.2012 the plaintiff filed affidavit of service . On 5.1.2013 the learned trial Judge noted that the defendants have not filed written statement though they were directed to file written statement by order dated 14.9.2009 and, therefore, directed the suit to proceed without written statement. Perusal of the affidavit in support of the motion shows that no explanation is given for the period between 14.9.2009 and September, 2015. Defendants no.1 and 3 simply put blame on their previous advocate. However, affidavit in support is totally silent as regards the attempts made by these defendants for filing written statement by contacting their previous advocate. This is to be appreciated as defendant no.1 is a partnership firm and defendant no.3 is one of the partners of defendant no.1-partnership firm. For the reason recorded in paragraphs 4 to 6 of the impugned order, I do not find any case is made out by defendants no. 1 and 3 for interfering with the impugned order.

6. Mr. Lad relied upon the decisions referred in paragraph 5. He submitted that the defendants should not be penalized on

account of negligence/default of their advocate. In the present case, I am satisfied from the record that the blame is put forth only on the advocate without giving explanation for inaction on the part of defendants no. 1 and 3. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)