

Mr. S. C. Hardikar for Petitioner.
Mr. Shreyas Adyanthaya for Respondent.

P.C. :

Heard Mr. Hardikar, learned Counsel for petitioner and Mr. Adyanthaya, learned Counsel for respondent at length. Rule. Mr. Adyanthaya waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 02.03.2015 passed by the learned Civil Judge, Senior Division, Pune below exhibit-32 in Special Civil Suit No.1238 of 2012. By that order, the learned trial Judge rejected the application (exhibit-32) taken out by the petitioner to set aside the order dated 01.12.2014 refusing to accept his written statement exhibit-27.

3. Mr. Hardikar submitted that on 05.04.2013, Bailiff submitted report to the effect that petitioner, hereinafter referred to as 'defendant No.1', was not found and the suit premises was found locked. Upon inquiries, neighbour by name Shubham Sunil Pandit, minor informed the Bailiff that defendant No.1 is not staying at the suit address and is

residing at Bibavewadi. Intermittently, he visits the suit premises. Bailiff, therefore, could not serve the suit summons on defendant No.1. Defendant No.1 however collected copy of the summons and notice from the neighbour and suo motu appeared in person on 15.04.2013. On that date, he made application for adjournment for engaging Advocate as also filing written statement and reply to the application for interim relief. In that application, he also made grievance about the Suit bearing No.604 of 2012 and application for injunction bearing No.1238 of 2012. Accordingly, adjournment was granted to the defendant No.1.

4. Mr. Hardikar submitted that on 24.06.2013, Advocate for the defendant filed his Vakalatnama. The Suit was adjourned to 06.08.2013 and for filing written statement to 16.08.2013. Defendant No.1 filed written statement at exhibit-27 on 16.09.2013. He submitted that basically, defendant No.1 was not served with the plaint and the documents.

5. Mr. Hardikar submitted that on 16.09.2013, defendant No.1 filed a written statement at exhibit-27, which is within 90 days from 24.06.2013. He, therefore submitted that the learned trial Judge was not justified in rejecting the application on the ground that limitation will start from 15.04.2013.

6. On the other hand, Mr. Adyanthaya supported the impugned order. He submitted that earlier adjournments were granted to the defendant No.1 to file written statement. The first adjournment was given on 06.08.2013 and thereafter Suit was adjourned to 16.08.2013. Despite giving sufficient opportunity to the defendant No.1, he did not file written statement. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that on 24.06.2013 on behalf of the defendant No.1, Advocate made application for adjournment. In paragraph 1, it was averred thus,

“1. This proceeding is posted today for filing of the written statement and the say to Exh.5 by this Defendant. The Defendant has not received the copies of the plaint and the other documents / annexures filed by the Plaintiff are not supplied to this Defendant. Hence it is not possible for this Defendant to file his written statement and say to Exh.5 as on today.”

8. It appears that plaintiff did not oppose that application exhibit-22 by filing reply and adjournment was given. It is also evident from record that duly verified written statement dated 16.09.2013 was filed. It is also evident from record that after 24.06.2013, defendant No.1 was served with the copy of the plaint and documents. Considering this fact, it cannot be said that the written statement dated 16.09.2013 was not within 90 days from the service of copy of the plaint and documents.

9. In view thereof, impugned order cannot be sustained and is set aside accordingly. The learned trial Judge will take written statement and say to exhibit-5 dated 16.09.2013 which is at exhibit-27 on record and proceed with the Suit in accordance with law. Rule is made absolute in the aforesaid terms with no order as to costs. Liberty is reserved to the respondent No.1 to file application for expeditious disposal of the Suit. If such application is made, the learned trial Judge will pass appropriate order.

(R. G. KETKAR, J.)