

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

WRIT PETITION NO. 10516 OF 2016

Shakuntala Arvind Gokhale & Ors.

...Petitioners

Versus

M/s. Bal Enterprises & Ors.

...Respondents

.....

Mr.Bharat Joshi for the Petitioners.

Mr.Niranjana C. Parekh a/w. Mr.Nirav J. Marjadi i/b. Mansukhlal Hiralal & Co. for the Respondents.

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CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JUNE 14, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the order dated 30.10.2014 passed by the learned Judge, City Civil court, Greater Mumbai in Chamber Summons No. 1213 of 2014 in S.C. Suit No. 8582 of 1992.

3. Respondent no.1/ original plaintiff had filed the Suit for specific performance against the petitioners, who are the original defendants/ owners of the land. Earlier, defendant no. 6 (a), who is present petitioner no.2 was not a party to the proceedings, but in the year 2009,

she was joined as a legal heir and accordingly, she was taken on record in June 2009. She had filed the additional Written Statement in November 2009 alongwith other petitioners i.e. original defendant nos. 7 to 10. No order was passed on the said Written Statement. Suit No. 724 of 1992 was pending before the High Court and subsequently, the said Suit was transferred to the City Civil Court, Mumbai and numbered as Suit No. 8582 of 1992. The said Suit was transferred from Bombay High Court to City Civil Court in the year 2011 due to extension of pecuniary jurisdiction. From 2009 to 2011, no order was passed as the objection in respect of the application for condonation of delay was not filed alongwith the written statement. After noticing this, the learned Judge of the City Civil Court directed petitioner no.2 i.e. original defendant no. 6 (a) to take out proper proceeding. Inter-alia, defendant no.6 (a) alongwith defendant nos. 7 to 10 had filed the Written Statement alongwith the application for condonation of delay in Chamber Summons. Respondent no.1 i.e. original plaintiff opposed this application on various grounds including jurisdiction, explanation regarding delay and no contradictory stand can be taken in the Written Statement when earlier Written Statement filed by defendant nos. 7 to 10. After hearing both the sides, the learned Judge, City Civil Court, Greater Mumbai was pleased to reject the Chamber Summons by order

dated 30.10.2014. Hence, this Writ Petition.

4. This Writ Petition was filed in March 2016.

5. After hearing both the parties and considering the fact that the Written Statement was filed by defendant no. 6 (a) in November 2009 as she was made a party in the Suit in June 2009, I am of the view that delay can be condoned, as there was very less delay in filing the Written Statement from June 2009 to November 2009. To that effect, the order of the trial Court in Chamber Summons is set aside with following two riders:-

(a) Firstly, the Written Statement of defendant nos. 7 to 10 is already taken on record and therefore, this Written Statement which is filed is to be considered as exclusively submitted by defendant no.6 (a) i.e. petitioner no.2 and to that effect, defendant no.2 is directed to make verification within a period of two weeks.

(b) Secondly, there is delay of 1 ½, years in filing this Writ Petition. The Suit is pending since 1992. Hence, petitioner no.2 i.e, defendant no. 6 (a) is directed to pay cost of Rs. 10,000 to the original plaintiff within a period of two weeks.

6. I am informed that the affidavit-in-chief is filed by the original plaintiff-respondent no.1 and therefore, the parties to co-operate with each other, so that the matter can proceed. The trial Court may frame issues accordingly mainly with other contentions on merits.

7. In view of the above, Writ Petition is allowed and disposed of.

(MRIDULA BHATKAR, J.)