

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

WRIT PETITION NO.7005 OF 2017

Buildtech Engineers

... Petitioner

Vs.

Suresh Duryodhan Maharana & anr.

... Respondents

Mr.Shishir Pandey for the Petitioner

Mr.Vishal Thaker with Ms.Anjali Trivedi i/b Vinod Thaker for
Respondents

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 31, 2017**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. In this Writ Petition, the order dated 16.12.2016 passed below exhibit 55 in Special Civil Suit No.207 of 2013 is under challenge. The chronological events and the facts will speak for itself. The Special Civil Suit No.207 of 2013 is filed under Maharashtra Ownership of Flats Act for specific performance by the plaintiff. Defendant No.1 did not file written statement and hence, 'no written statement' order was passed. Thereafter, the application was made by the defendant for condonation of delay in

filing the written statement. So, the learned 4th Civil Judge, Senior Division, Thane, condoned the delay subject to payment of costs of Rs.12,000/- to be paid by the defendant to the plaintiff. The cost was to be paid by the next date. After 27.7.2016, the matter appeared on 17.8.2016. Thereafter, on 3.9.2016 and then on 1.10.2016. However, on none of these dates, the petitioner paid the cost to the respondent/original plaintiff. No explanation was sought by the petitioner. On 20.10.2016, the petitioner preferred an application to allow belated compliance of the order of seeking permission to file the written statement. The said application was rejected by order dated 16.12.2016. Thereafter, on 27.6.2017, the present petition challenging the said order of 16.12.2016 was filed. The final hearing / arguments was concluded on 14.7.2017 and now suit is scheduled for judgment on 1.8.2017.

3. A specific query was made by this Court with the learned Counsel for the petitioner about the delay in payment of cost from 27.7.2016 and for moving an application on 20.10.2016. The learned Counsel for the petitioner has submitted that there is a dispute between the partners of the petitioner and, therefore, the cost was not paid. It is to be noted that the order under challenge

was passed on 16.12.2016, however, the petition is filed on 27.6.2017, i.e., nearly 6½ months thereafter.

4. The observation made by the learned Judge that it appears that there is a willful disobedience of the order of the Court by defendant No.1 by not paying costs is correct. The order passed by the learned Judge rejecting the said application is well reasoned. As per the schedule, which is produced before me, the suit is placed for judgment by the trial Court on 1.8.2017. Under such circumstances, generally, no order of stay of the judgment is to be passed. However, for a proper adjudication of the issue, it is better that both the parties are to be heard on merits and for that reason only, this petition needs to be allowed.

5. Writ Petition is accordingly allowed on the following terms:

i) Written statement is to be filed by tomorrow itself i.e., by 1st August, 2017 and it is to be taken on record tomorrow itself, subject to deposit of costs of Rs.50,000/- in the trial Court on or before 7.8.2017. Upon payment of costs, the plaintiff be allowed to withdraw the same.

- ii) The trial Court to proceed with the recording of evidence thereafter and the parties shall cooperate and keep the witnesses present and also produce the documents.
 - iii) The trial Court to proceed for settlement of issues after 8.8.2017 subject to payment of costs by the defendant. If the costs are not deposited till 7.8.2017, then, the trial Court to proceed as if there is no written statement.
 - iv) The trial Court to expedite the case and conclude the same on or before 10th October, 2017.
6. Writ Petition is disposed of on the above terms.

(MRIDULA BHATKAR, J.)