

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8895 OF 2017

Therakan D. Joseph	..	Petitioner.
v/s.		
Dolphin Developers	..	Respondent.

Mr. Rajesh Singh, for the Petitioner.
Mr. Sanjiv Sawant with Mr. Balvendra Singh, for the Respondent.

CORAM: M.S.SANKLECHA, J.
DATE : 20th SEPTEMBER, 2017.

P.C:-

Moved for urgent reliefs.

At the request of the parties, Petition is being disposed of finally at the stage of ad-interim application.

2 Mr. Rajesh Singh, learned Counsel appearing for the Petitioner states that urgency arises in view of the fact that the matter is fixed before the Trial Court on 28th September, 2017, for hearing.

3 This Petition under Article 227 of the Constitution of India, challenges the order dated 25th April, 2017 passed by the City Civil Court at Bombay. By the impugned order, the Petitioner's application for taking a written statement on record, was rejected. The Suit is of the year 2013. In these very proceedings, the Apex Court had on 5th March, 2016 passed

an order to dispose of the S.C. Suit No.1391 of 2013 (these proceedings) within a period of one year from the order dated 15th March, 2016.

4 The impugned order records the fact that impugned order in support of the written statement seeking to condone the delay in filing written statement, sought to explain the delay on account of non-service of writ of summons. This statement of the Petitioner was found by the impugned order to be false/ incorrect. This, as the Petitioner has in fact been served on 31st October, 2013 and in spite of that notice of motion to take the written statement, was taken out only on 21st January, 2017. In the above view, the Court rejected the application for taking written statement on record which is sought to be filed after more than three and half years of the service of writ of summons. No fault can be found with the impugned order. In fact, the view taken by the impugned order, would not warrant any interference under Article 227 of the Constitution of India.

5 In the alternative, Mr. Singh, learned Counsel appearing for the Petitioner states that the Petitioner may be allowed to refer and rely upon affidavit filed in September, 2013, to a reply to the Notice of Motion No.2256 of 2013 in S. C. Suit No.2672 of 2013 in support of his defence at the final hearing of the suit.

6 Considering the fact that trial has not yet commenced, no prejudice would be caused to the Respondent, if the Petitioner is allowed to refer to and rely upon his affidavit of September, 2013 filed in the Notice of Motion No. 2256 of 2013 as the basis on his defence to the suit.

7 Considering the fact that the Apex Court by an order dated

15th March, 2016 had directed the Trial Court to decide the suit within a period of one year from 15th March, 2016, parties are directed to co-operate with the Trial Court for an expeditious and early disposal of suit, bearing in mind the directions of the Apex Court.

8 **Petition disposed of** in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)