

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

WRIT PETITION NO.12834 OF 2016

Shitla Prasad Ramsamujh Jaiswal ...Petitioner

Versus

Dilip Kumar Ramasare Kanu & Anr. ...Respondents

.....
Mr.Pankaj Dwivedi for the Petitioner.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 03, 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 22.02.2016 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai in Notice of Motion in Suit No. 270 of 2011.

3. The petitioner/plaintiff had filed the Suit for declaration of his right in the suit premises. Though the Suit is of 2011, the respondents/defendants did not file written statement in time. Hence, an ex-parte order was passed and thereafter, the respondents/defendants took out the Notice of Motion. The said Notice of Motion was dismissed. Respondent no1/defendant no1. had filed subsequent

Notice of Motion seeking permission to file written statement. The trial Court allowed the said Notice of Motion and has given permission to respondent no1./defendant no.1 to file written statement and directed to register the said Notice of Motion. The said order is under challenge.

4. The learned counsel for the petitioner submits that the learned trial Judge has committed an error in condoning the delay of 55 days; though there is, in fact, a delay of more than three years. He further submits that the earlier Notice of Motion No. 2539 of 2012 was dismissed on 17.12.2013. However, no appropriate steps were taken by the respondents/defendants.

5. Mr.Sutrale, the learned counsel for the respondents submits that a copy of the plaint was, in fact, served on 13.09.2011. The respondent no1./defendant no.1 is an illiterate person and was not aware about the Court proceedings, so also the documents were not served to him alongwith plaint. Respondent no.1/defendant no.1 was also having health problem. He further submits that respondent no.1/defendant no.1 has already filed written statement before the trial Court and therefore, this petition be dismissed.

6. Heard submissions. The petitioner/plaintiff claims his right, title and declaration in respect of the immovable property and therefore, it is always just to allow other party to put his defence and the matter is to be decided on merits. There is a delay on the part of the respondents/defendants. It appears that the respondents/defendants are careful and diligent in proceeding with the matter. However, the order dated 22.02.2016 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai cannot be faulted with. I confirm the said order, subject to payment of the costs of Rs. 5000/-, which is to be paid to the petitioner/plaintiff within a period of two weeks before the trial Court.

7. In view of the above, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)