

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7450 OF 2013

Samata Shikshan Sanstha & Anr. ...

Vs.

Maharashtra Institute of Advance
Electronics & Computer Technology.

Petitioners
(Orig. Defendants)

Respondents
(Orig. Plaintiffs)

Mr. Mohit Jadhav, for the petitioners.

Mr. Rahul S. Arote, for the respondents.

CORAM: SMT. SADHANA S. JADHAV, J.

DATE : 4th October, 2017.

P.C.

Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioners herein happen to be the original defendants in Suit No. 3891 of 200 pending before the City Civil Court, Mumbai. The suit was filed for recovery of Rs. 1,50,000/-. The suit was filed in the year 2000 and the defendant had caused his appearance on 28.10.2004, but had failed to file his written statement on record with the stipulated time and therefore on 7.2.2008, the Court passed an order that No written statement and that it was directed that the suit be proceeded undefended.

3. The defendant had taken out a Notice of Motion on 26.2.2013 and had requested the Court to take the written statement on record. It is pertinent to note that along with the application, the defendant had failed to

file the written statement. In the application requesting the Court to take the written statement on record, no cogent reasons were assigned to substantiate the delay in filing the written statement practically after 13 years of the institution of the suit. An affidavit was filed in support of the Notice of Motion and no cogent reasons were assigned in the affidavit also. It appears that although he had instructed the Advocate to defend him in the said suit, the Advocate had only filed his vakalatnama, but not filed the written statement. It is apparent that the defendant had not been diligent in defending the suit and therefore, by an order dated 17.4.2013, the learned Judge of the City Civil Court, Bombay had rejected the Notice of Motion.

4. Being aggrieved by the said order, the petitioners have approached this Court by filing the present Petition. By an order dated 20.8.2013 passed by this Court, further proceedings in the suit were stayed.

5. The learned counsel for the respondents has vehemently opposed the grant of relief in the present petition. It is specifically contended that the claim of the plaintiff is being repudiated by protracting the trial for more than 17 years and, therefore, it is prayed on behalf of the respondents that the petitioners be saddled with exemplary costs.

5. This Court cannot be oblivious of the fact that the suit is filed almost 17 years ago. It is a suit seeking the relief of money decree and

therefore, it was necessary to expedite the suit in the interest of justice and to consider the claim of the plaintiff which is being stayed for almost four years, it would be necessary to pass the following order :-

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 17.4.2013 passed by the learned Judge of the City Civil Court, Bombay is hereby quashed and set aside.
- (iii) The petitioners herein shall file an application along with the written statement before the trial Court on or before 3.11.2017.
- (iv) The petitioners shall also deposit costs of Rs.5,000/- in the trial Court along with the written statement. Upon failure to file the written statement on or before 3.11.2017 and deposit costs of Rs.5,000/-, the order dated 17.4.2013 would stand restored and the trial Court shall proceed with the suit as an undefended suit.
- (v) The learned City Civil Court shall decide the suit on or before 30.4.2018.

Rule is made absolute in the above terms. The Petition is disposed of.

[SMT. SADHANA S.JADHAV, J.]