

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2394 OF 2018

Tapi Prestressed Product Ltd.
Gat No.537, Bank of Tapi River,
Anjale, Taluka Yawal,
District Jalgaon 425301
Through its authorized
representative Dipesh Motilal
Kotecha, age 43 years,
Occ. Director, R/o Tapi Nagar,
Bhusawal, Dist. Jalgaon. ..Petitioner

Versus

Municipal Corporation Jalgaon
Through its Commissioner,
Municipal Corporation, Jalgaon. ..Respondent

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Advocate for Petitioner : Shri Shah Subodh P.
Advocate for Respondents : Shri Patil Pradip R.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 13, 2018
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ORAL JUDGMENT :-

1. Heard the learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner / establishment is aggrieved by the order dated 18.12.2017, by which, the trial Court has allowed application Exhibit 33 and permitted the respondent / Municipal Corporation to file its written statement by imposing costs of Rs.5,000/-.

5. Learned counsel for the petitioner has strenuously criticized the impugned order. His contentions can be summarised as under:-

(a) The trial Court has committed a gross error in recalling its 'No Written Statement' order.

(b) Order VIII Rule 1 of the Civil Procedure Code (CPC) has been mis-interpreted.

(c) Lack of due diligence on the part of the respondent, has been lost sight of.

(d) The stage in the matter was for advancing final arguments and yet the 'No written statement' order is recalled.

(e) The delay caused by the respondent is not properly explained.

(f) The respondent has deliberately caused a delay in

filing the written statement.

(g) The reasons assigned for seeking vacating of the 'No written statement' order are not justifiable.

(h) Application Exhibit 33, seeking recalling of the 'No written statement' order is not maintainable.

6. Besides the above submissions based on the grounds formulated and the pleadings in the memo of the petition, it is orally submitted by the petitioner that the trial Court has agreed with the contention of the petitioner that the reasons assigned are not sufficient and yet the 'No written statement' order is recalled.

7. The issue as regards a commercial dispute is not pressed.

8. Learned counsel for the respondent has strenuously supported the impugned order. While doing so, he submits that the respondent has noticed that in some matters, where special civil suits are filed against the Corporation for seeking recovery of huge amounts ranging from more than one crore to about forty crores, written statements have not been filed though the Corporation has a panel of Advocates engaged in the Civil

Courts. Such instances have been noticed by the Corporation and it is, therefore, taking steps to ensure that there would not be any recurrence of such instances.

9. He further submits that the petitioner / plaintiff has sought recovery of Rs. 39,65,37,795/- from the Corporation towards purported unpaid amounts. If no written statement is filed, the plaintiff would virtually get a walk over and would succeed in taking an amount of about Rs. Forty Crores from a public body. It is further stated that under Order VIII Rule 1 of the CPC, no doubt a litigant has to properly explain the delay. But the limit of 90 days would not be mandatory and in order to meet the ends of justice, an opportunity to file the written statement deserves to be granted.

10. Having considered the submissions of the learned Advocates for the respective sides, I find that the issue of due diligence and delay has been considered by the Honourable Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and in the matter of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649]. The Honourable Apex Court has laid down certain principles in

the case of Esha (supra), which read as under:-

"15. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public

mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by

taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

11. I find that the facts appearing in this case are quite peculiar. The plaintiff has filed a suit for recovery sometime in August 2016. The suit summon was served on the respondent on 22.8.2016 and it appeared through an Advocate on 3.9.2016. 'No Written Statement' order was passed on 15.10.2016, as the Advocate for the Corporation did not file an application for seeking an adjournment to file a Written Statement. Issues were cast forthwith and the matter was listed for evidence. The plaintiff recorded his evidence. There was no cross-examination and no evidence was led by the Corporation. In a span of about 16 months, the suit reached the final stage.

12. On 7.11.2017, Exhibit 33 was filed by the Corporation

along with its written statement running into nine pages.

13. This is not the first case that this Court has noticed such circumstances, wherein, a suit for recovery of huge amounts against the same Corporation had reached the final stage and the panel advocate as well as the Corporation failed to file the written statement. In Writ Petition No. 12029 of 2017 (Nitesh Suresh Jain Vs. Jalgaon City Municipal Corporation), a similar situation has arisen before this Court. Notice in the said matter was issued only for enhancing the costs, as in that matter, the trial Court had granted a meager amount to the plaintiff, while recalling the 'No Written Statement' order.

14. It requires no debate that if a written statement is not permitted in this matter, a public body will have to pay more than Rs. Forty Crores, through the tax payers money to the plaintiff without posing a challenge in the suit. It would virtually be a walk over. What intrigues me is as to how could the Corporation turn a blind eye to such matters, wherein a huge amount in crores would be taken from the public exchequer, as if the Corporation desires that such a suit be allowed without posing a challenge. Such a conduct on the part of the Corporation and if their panel Advocate is involved, then such a

conduct on his part as well, is deprecable.

15. In the above circumstances, I find that the trial Court has rightly permitted the Corporation to file its written statement and had also imposed costs of Rs.5,000/- which has already been paid as per the noting on the copy of the impugned order, which is dated 21.12.2017, within three days from the passing of the impugned order.

16. In order to send a message, loud and clear, to this Corporation that such instances should not occur in the interest of public exchequer and the tax payer's money, that I find that the costs needs to be enhanced. As such, I am imposing additional costs of Rs.5,000/- which the respondent shall deposit in the trial Court within three weeks from today and the said amount shall be deposited from the salary of the concerned officer who was briefing the concerned Advocate before the trial Court. After the amount is deposited, the plaintiff would be at liberty to withdraw the said amount without conditions.

17. In the light of the above, this petition is partly allowed only to the extent of enhancing the costs. Rest of the impugned order is sustained.

18. Rule is accordingly, made partly absolute.

(RAVINDRA V. GHUGE, J.)

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