

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NOS.669, 670 and 671 of 2018****WRIT PETITION NO.669 of 2018**

BHIKULO GOPAL PARAB .. Petitioner.
 Vs
 LAXMI VISHNU PARAB
 AND 3 ORS .. Respondents.

AND

WRIT PETITION NO.670 of 2018

ANAND VISHRAM PARAB .. Petitioner.
 Vs
 LAXMI VISHNU PARAB
 AND 3 ORS. .. Respondents.

AND

WRIT PETITION NO.671 of 2018

ARJUN @ ARJUNA KRISHNA
 @ CRISNA PARAB @ POROBO .. Petitioner.
 Vs
 LAXMI VISHNU PARAB
 AND 3 ORS. .. Respondents.

Shri Deepak Goankar, Advocate for the petitioner in all the petitions.

Shri S. R. Rivankar and Shri Sagar Rivankar, Advocates for the respondent no.4 in all the petitions.

CORAM :- C. V. BHADANG, J.

DATE: 11th December, 2018

ORAL ORDER :

All these petitions involve a common and connected

question and they can be conveniently disposed of by this common order.

2. The petitioners in these three petitions are the original plaintiffs, who have filed three separate Civil Suits against the respondents. The respondent no.4 (defendant no.4) was served with the suit summons on 15/12/2016 and the date of appearance was 16/12/2016, on which date, the defendant no.4 appeared and sought two months' time to file the Written Statement. Accordingly, the suit was adjourned to 25/01/2017. On that date, the defendant no.4 sought one more month's time to file the Written Statement and the suit was adjourned to 22/02/2017. That was 70th day from the service of summons on the defendant no.4. On 22/02/2017, the defendant no.4 filed an application for rejection of plaint under Order VII, Rule 11 of the Code of Civil Procedure (CPC). That application was eventually rejected by the learned Trial Court on 06/09/2017 and the suit was fixed thereafter on 06/10/2017. On that day, the Presiding Officer was on leave and the suit was adjourned to 01/11/2017, on which date, the defendant no.4 filed its Written Statement. It appears that the petitioners endorsed a say on the Written Statement, raising objection to the Written Statement being taken on record on the ground that the Written Statement was filed beyond the period of

90 days from the date of service of summons.

3. The learned Trial Court heard the parties on this specific point and by the impugned order dated 13/04/2018, has rejected the objection raised by the petitioners, permitting the Written Statement to be taken on record. Feeling aggrieved, the petitioners are before this Court.

4. I have heard Shri Gaonkar, the learned Counsel for the petitioners and Shri Rivankar, the learned Counsel for the respondent no.4 (defendant no.4), which is alone the contesting party. With the Assistance of the learned Counsel for the parties, I have gone through record.

5. It is submitted by Shri Gaonkar, the learned Counsel for the petitioners that reliance placed by the learned Trial Court on the decision of the Supreme Court in the case of **R. K. Roja Vs. U. S. Rayudu and Another**; (2016)14 SCC 275, is misplaced. It is submitted that the question involved in that case was whether the application for rejection of plaint, can be kept pending and directed to be decided at the time of final hearing as was held by the High Court. It is submitted that there was no formal application filed by the respondent no.4 for extension of time/

condonation of delay, in filing the Written Statement and in the absence thereof, the learned Trial Court could not have allowed the Written Statement to be placed on record. It is submitted that even in the case of ***Saleem Bhai Vs. State of Maharashtra;*** (2003)1 SCC 557, it has not been held by the Supreme Court that automatically the period to file Written Statement would stand extended, where the defendant has sought rejection of plaint earlier. Reliance is placed on the decision of this Court in the case of ***Prabha Pundalik Naik Vs. Uday Pundalik Naik*** (W.P.No.589/2007, decided on 01/12/2008), in order to submit that filing of an application for extension/ condonation is necessary and in the absence of any exceptional circumstances made out by the defendant, the Written Statement cannot be allowed to be placed on record. The learned Counsel submitted in the alternative that the respondent no.4 can file such an application making out such exceptional circumstances, which prevented the respondent no.4 from filing the Written Statement within a period of 90 days.

6. Shri Rivankar, the learned Counsel for the respondent no.4 has supported the impugned order. It is submitted that as held by the Supreme Court in the case of ***Saleem Bhai*** (supra), the defendant cannot be called upon to file the Written Statement during the pendency of the application for rejection of plaint. It is

submitted that the Supreme Court in the case of **R. K. Roja** (supra), placing reliance on its earlier decision in the case of **Saleem Bhai** (supra) has held that the defendant can file the Written Statement after rejection of the application under Order VII, Rule 11 of CPC. Shri Rivankar, the learned Counsel for the respondent no.4 submitted that there was a specific objection endorsed by the petitioners for taking on record the Written Statement on the ground that it was filed beyond the period of 90 days and the said issue has been specifically considered by the learned Trial Court and thus, it would be futile to ask the respondent no.4 to file such an application and for the Trial Court to decide the same. The learned Counsel submitted that in appropriate case, this Court can impose reasonable costs.

7. I have considered the submissions made and I do not find that any case for interference is made out.

8. As noticed earlier, the application for rejection of plaint was filed on 70th day from the date of service of summons i.e. within the period of 90 days. That application was rejected by the Trial Court on 06/09/2017, after which, the respondent no.4 filed Written Statement on 01/11/2017. In the interregnum, on one of the dates of hearing, the Presiding Officer was on leave.

9. It is true that in the case of **R. K. Roja** (supra), the Supreme Court was concerned with the order passed by the High Court, by which the High Court had directed the application for rejection of plaint being decided at the time of the final hearing. But a perusal of para 5 of the judgment in the case of **R. K. Roja** (supra), would clearly show that the Hon'ble Supreme Court has held that during the pendency of the application for rejection of plaint, there is no point or sense in proceeding with the trial of the case and therefore, the defendant is entitled to file the application for rejection of plaint before filing his Written Statement. It has been held that in case the application is rejected, the defendant is entitled to file his Written Statement thereafter. (See **Saleem Bhai** (supra)). In the present case, precisely, the objection raised by the petitioners was on the ground that the Written Statement was filed beyond the period of 90 days, which has been considered by the Trial Court. Thus, in my considered view, the learned Counsel for the respondent no.4 is right in contending that it would be futile now to ask the respondent no.4 to file an application for condonation of delay/ extension of time and then to ask the Trial Court to decide the same.

10. Apart from this, what I find is that the impugned order

does not result into any manifest injustice on the petitioners, if the Written Statement filed by the respondent no.4 is allowed to be taken on record. It is now well settled that the jurisdiction under Article 227 of the Constitution of India is to ensure that the Courts and Tribunals subordinate to this Court act within the bounds of their authority and the orders passed do not result into manifest injustice. The petitioners can be appropriately compensated by costs. In that view of the matter, the petitions are dismissed, however, subject to the respondent no.4 paying/ depositing costs of Rs.10,000/- in each of these petitions before the learned Trial Court, within three weeks from today.

C. V. BHADANG, J.

SMA