

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

WRIT PETITION NO.1889 OF 2018

Shri Rajendra Shantaram Chaudhari	... Petitioner
Vs.	
Ulhasnagar Municipal Corporation through its Commissioner	... Respondent

Mr.R.S.Apte with Mr. S.C.Wakankar for the Petitioner.
Mr.Sanket Mane i/by M/s Vidhi Partners for the Respondent.

**CORAM : G.S.KULKARNI, J.
DATE : FEBRUARY 14, 2018.**

P.C.:

. Heard learned counsel for the parties. The challenge in this petition is to an order dated 25th January, 2018 passed by the learned Civil Judge Senior Division, Kalyan, whereby an application made on behalf of the petitioner below Ex.31 dated 25th January, 2018 seeking time of one month to file written statement, stands rejected by the following order:-

“Matter is already adjd. & thereafter present application is filed, hence stands rejected.”

2. In brief, the background is that on 12th January, 2018 the petitioner was served with a summons in case Reference No.1 of 2017, calling upon the petitioner to appear before the court on 17th January, 2018. It is not in dispute that alongwith the writ of summons the proceedings/documents of the Reference, were not served on the petitioner. On the next date of hearing, that is on 25th January, 2018 on behalf of the respondent an application came to be moved below Ex.29 that the respondent be permitted to place on record letter of the Commissioner dated 25th January, 2018 and also a CD of the conversation between the Commissioner and the petitioner. The said application was allowed on the same day by an order dated 25th January, 2018.

3. On this background the petitioner moved an application below Ex.27 on the same day (25th January, 2018) inter-alia stating that the petitioner needs to collect documents as also he needs to verify the contents of the CD before he files a written statement and for this reason the petitioner be granted one month time to file a written statement. On the said application the learned Judge passed an order “*Short time granted so as to file*

say.” Again on the same day the petitioner moved another application below Ex.31 seeking one month time to file written statement. The petitioner interalia averred that he was served with a CD and the correspondence on 25th January, 2018, and he would require time to examine the contents of the CD and the authenticity of the conversation recorded in the CD. The petitioner therefore prayed he be granted one month time to file written statement. This application was rejected by the impugned order.

4. Learned senior counsel for the petitioner in assailing the impugned order submits that the rejection of the said application by the learned trial Judge was not proper. It is submitted that considering the circumstances, it was necessary that sufficient time be granted to the petitioner to file written statement which would require the petitioner to undertake a prior exercise to verify the contents of the CD and consider the documents placed on record before the trial court. It is his submission that the impugned order has caused a serious prejudice to the petitioner. On the other hand, learned counsel for the respondent though supports the order, however, is not opposed to a reasonable time

being granted to the petitioner to place on record of the trial Court the petitioner's written statement.

5. Having heard the learned counsel for the parties and having perused the impugned order, in my opinion, the approach of the trial judge in passing the impugned order is rather harsh. It is not in dispute that the petitioner was served with the suit summons on 12th January, 2018 and that he had appeared before the court for the first time on 17th January, 2018. It is also not in dispute that CD alongwith documents are placed on record by the respondent on 25th January, 2018 and the copy of the same was handed over to the petitioner on the very same day, on which day the petitioner had moved an application below Ex.27 as also the application in question below Ex. 31 seeking time to file written statement.

6. Considering the above circumstances, in my opinion, the learned Trial Judge should not have rejected the application of the petitioner, seeking a reasonable time to file written statement. It is thus in the interest of justice that a reasonable time be granted to

the petitioner. Time of one month as prayed by the petitioner to file a written statement is not very unreasonable.

7. Accordingly, the impugned order dated 25th January, 2018 as passed by the learned trial judge is set aside. The petitioner is permitted to file the written statement in Reference No.1 of 2017 on or before 28th February, 2018. The petition is accordingly allowed in these terms. No costs.

(G.S.KULKARNI, J.)

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