

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2131 OF 2017

Niraj Wishwanath Kochhar and another ... Petitioners
Vs.
Bhagwan Chaterbhojdas Bhatia and others ... Respondents

Mr. Ashwin Shete a/w. Mr. Santosh Avhad i/b. M/s. Jayakar & Partners for
Petitioners.
Ms Ranjana Parikh for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : APRIL 17, 2018

P.C. :

Heard Mr. Shete, learned Counsel for petitioners and Ms Parikh, learned Counsel for respondents No.1 and 2 at length. On the oral application made by Mr. Shete, leave to delete respondents No.3 and 4 [defendants No.1(a) and 1(e)] is granted. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants No.1(b) and 1(d)', have challenged the judgment and order dated 30.06.2016 passed by the learned Judge, Court Room No.15 of the Small Causes Court at Mumbai below exhibit-44 in R.A.E.Suit No.375/555 of 2010 as also the judgment and order dated 25.01.2017 passed by the Appellate Bench of the Small Causes Court in Revision Application No.230 of 2016. By these orders, the Courts below rejected the application exhibit-44 made by defendants No.1(b) and 1(d) for condoning the delay of 2 years, 9 months and 15 days in filing the written statement and taking their written statement on record. Rule. Ms Parikh waives service for respondents No.1 and 2. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. Mr. Shete states that defendants No.1(b) and 1(d) have filed notarized written statement, which is noted and registered at Sr.No.3238 on 21.12.2005 by Dr. S. C. Srivastava, Notary along with application exhibit-44 and the same is on the record of the trial Court.

4. Mr. Shete states that within four weeks from today, defendants No.1(b) and 1(d) will deposit costs of Rs.50,000/- in the trial Court under intimation in writing to the learned Counsel for the plaintiffs.

5. Ms Parikh submits that the Suit is instituted by plaintiffs invoking ground of bonafide requirement among other grounds and in fact, issues were framed on 27.08.2013 as defendant No.1(a) had filed a written statement. On 23.08.2014, on behalf of plaintiffs, affidavit of evidence and documents is filed. She also states that cross-examination on behalf of the defendant No.1(a) is completed. She further submits that if the Court is inclined to allow the application exhibit-44, in that case, the Suit may be disposed of in a time bound manner.

6. Having regard to the fact that plaintiffs have invoked ground of bonafide and reasonable requirement, I find that the request made by Ms Parikh is reasonable. Hence, by consent of the parties, Petition is disposed of in the following terms:

a. Impugned orders are set aside;

b. Application exhibit-44 is allowed and the written statement shall be taken on record subject to defendants No.1(b) and 1(d) depositing costs of Rs.50,000/- in the trial Court within four weeks from today under intimation in writing to the Advocate for the plaintiffs. In case the amount is not deposited within the stipulated time, the impugned orders shall stand revived and the Petition shall stand dismissed without further reference to the

Court;

c. If the amount is deposited, plaintiffs are permitted to withdraw the same unconditionally;

d. The learned trial Judge will recast the issues on the basis of the written statement of defendants No.1(b) and 1(d) and also permit plaintiffs to file additional affidavit of evidence, if so desired;

e. The learned trial Judge is requested to dispose of the Suit on or before 31.12.2018;

f. Rule is made absolute in the aforesaid terms.

(R. G. KETKAR, J.)

Minal Parab