

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2242 OF 2014

Smt. Mangal Narendra Maske & Anr. .. Petitioners
vs.
Waman Shankar Maske & Ors. .. Respondents

Mr. Ajit Kenjale for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 26 MARCH 2018

P.C :

1] Heard Mr. Kenjale for the petitioners. The respondents, though served, neither present nor represented.

2] By order dated 5th March 2014, the parties were already put to notice that this petition may be heard and disposed of finally at the stage of admission. Hence, Rule. By the same order, the petitioners were also directed to deposit a sum of Rs.5,000/- in this court towards security of costs. Mr. Kenjale, the learned counsel for the petitioners submits that this direction has been complied with.

3] The challenge in this petition is to the order dated 10th January 2014 in terms of which, the learned trial Judge, declined leave to the petitioners to file their written statement.

4] In the impugned order it is stated that there was no application for condonation of delay filed by the petitioners. In any case, the reasons for the delay are too general and therefore, the leave came to be denied.

5] Mr. Kenjale, the learned counsel for the petitioners points out that delay had been explained by filing a formal application dated 10th January 2014. To this application, the respondents had also filed a reply. In the concluding paragraph of such reply the respondents have stated that if for any reasons the trial court considers granting of leave to the petitioners to file the written statement, then, the same may be subject to imposition of costs of Rs.5,000/- upon the petitioners.

6] In application dated 10th January 2014, some cause is shown for the delay of almost 13 months in filing the written statement. Such cause, does not appear to have been considered at all in the impugned order. In any case, from the reply filed by the respondents, it is clear that even the respondents were agreeable that the petitioners may be granted leave to file their written statement provided, costs of Rs.5,000/- are imposed upon them.

7] Taking into consideration the circumstance that filing of written statement is a very important step in the contest of the suit and

further, the fact that some cause, had been shown by the petitioners, this is a fit case where an additional opportunity can be granted to the petitioners. However, the respondents, cannot be unduly prejudiced. For no fault on their part, their suit has been unnecessarily prolonged. The costs of Rs.5,000/- may have been reasonable in the year 2014. However, for the further lapse of time the petitioners will have to pay additional costs to the respondents.

8] Accordingly, the impugned order is set aside. The petitioners are granted leave to file their written statement within four weeks from today. This is subject to the petitioners paying costs of Rs.10,000/- to the respondents (original plaintiffs). The costs are also to be paid within a period of four weeks from today.

9] Since, the respondents have not appeared despite notice, the petitioners, in order to get benefit of this order, are directed to deposit costs of Rs.10,000/- before the trial court within four weeks from today. Upon deposit of such costs, the trial court, shall accept the written statement of the petitioners. Further, upon production of evidence that such costs are indeed deposited before the trial court, the petitioners, shall be at liberty to withdraw the costs of Rs.5,000/- deposited by the petitioners in this court. It is made clear that in case, the costs of Rs.10,000/- are not deposited by the petitioners before the trial court within four weeks from today, then,

this petition shall be deemed to have been dismissed with costs of Rs.5,000/-. The costs so deposited, shall then be made over by the Registry of this court to the trial court and the trial court, shall thereafter, pay such costs to the respondents (plaintiffs before the trial court).

10] Rule is made absolute to the aforesaid extent.

11] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)