

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

WRIT PETITION NO. 4263 OF 2017

Shaukat Dawood Rakhangî	...	Petitioner
V/s.		
Raumathbi Sabirali Kadri	...	Respondent

- Ms.Vaibhavi Pawar i/b. Mr.Suraj Kundalkar for the Petitioner.
- Ms.Hina A. Mody for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 21st FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and the Respondent.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 26th September, 2014 passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.3453 of 2013 in Suit No.5153 of 2007.

3] The said Notice of Motion was preferred by the present Petitioner who is original Defendant No.3 for condonation of delay and

for permission to file on record the written statement.

4] Perusal of the impugned order passed by the trial Court reveals that the Petitioner has not been consistent with the stand taken by him for the condonation of delay. He have claimed that the matter was handled by Mr.N.D. Rao, so he was not personally aware about the happenings in the proceeding. The trial Court has rightly held that such allegation without examining Mr.N.D.Rao cannot be accepted. It is also held by the trial Court and rightly so that the summons of the suit was duly served on the present Petitioner, but he did not take any steps to remain present in the matter and to file the written statement. Reliance is placed on the roznama of the proceeding of the suit in the trial Court to submit that some written statement dated 1st November, 2007 lying under objections was taken on record. However, admittedly, the Petitioner has not filed such written statement and hence, the Petitioner also cannot take any advantage of the said roznama.

5] It is also pertinent to note that this Notice of Motion was filed in the year 2013, after the earlier Notice of Motion No.2272 of 2013 came to be allowed partly on 11th July, 2013. In that Notice of Motion, the trial Court has rejected the Petitioner's prayer for filing of written statement and Petitioner was allowed only to take part in the

trial of the suit to point out legal causes and grounds against the claim and contentions of the Plaintiff. Against the order of the said Notice of Motion, the Petitioner has not preferred any writ, but filed this another Notice of Motion seeking the same prayer. The trial Court was therefore perfectly justified in rejecting this Notice of Motion. It was also rejected subject to costs of Rs.2,000/- payable to the Plaintiff and the conduct of the Petitioner does not justify any indulgence on the part of this Court also. Writ Petitioner has remained negligent throughout the proceeding from the year 2007 till 2013 when this Notice of Motion was filed and till the date in the year 2018 when Writ Petition came up for hearing. Such negligence cannot be condoned in any way.

6] At this stage, it is pointed out by learned counsel for the Respondent that the Petitioner has filed another Notice of Motion before the trial Court with a request that he has already filed the reply to the application for interim injunction and it may be treated as written statement. Learned counsel for the Respondent/Plaintiff makes a statement at bar that the said Notice of Motion is also dismissed.

7] Thus, no reason or ground is made out for this Court to interfere in the discretion exercised by the trial Court.

8] The impugned order passed by the trial Court therefore being just, legal and correct; no interference is warranted therein. Writ Petition therefore stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]