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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8038 OF 2016

Lakhan Channa Kanojia @ Pardeshi ..Petitioner.

V/s.

Smt.Pushpa Tanajirao Kadambadne & Ors. ..Respondents.

Mr.Akshay Pai I/b. Jagdishkumar Gupta for the petitioner.

None for the respondents.

CORAM: M.S.SONAK, J.

DATE : DECEMBER 12, 2018

P.C.:-

Heard Mr.Akshay Pai, learned counsel for the petitioner.

2. Challenge in this petition is to the order dated July 1, 2015 and December 14, 2015 by which the trial Court and the Revisional Court have refused to condone the delay of six years and seven months on the part of the petitioner in filing the written statement in R.A.D. Suit No.1250/2000.

3. Learned counsel for the petitioner submits that the time limit for filing the written statement commences from the date of service of writ of summons. He submits that in the present case, since no writ of summons was ever issued and served upon the petitioner, the time limit for filing the written statement never commenced. He further points out that in the suit as originally instituted, the petitioner was not impleaded as a defendant. He submits that the petitioner was subsequently impleaded as a defendant by invoking the provisions of Order 1 Rule 10 of the Civil Procedure Code ('the C.P.C.' for short). He, therefore, submits that the time limit for filing of written statement as prescribed under Order 8 Rule 1 of the C.P.C. ought not to be applied or in any case ought to be liberally construed. Mr.Pai further submits that in terms of Order 1 Rule 10 sub-rule (5) of the C.P.C., the proceedings against any person added as a defendant shall be deemed to have begun only after service of summons. He, therefore, submits that in the present case, the proceedings against the petitioner cannot be deemed to have commenced so as to require the petitioner to file the written statement within a particular period of time. He submits that

since both the Courts have not considered the matter from this perspective, the impugned order warrants interference.

4. In the present case, it is true that in R.A.D Suit No. 1250/2000, the petitioner had not been originally impleaded as a party defendant. However, there is absolutely no dispute that by an order dated March 27, 2008, the petitioner was impleaded as defendant No.5 in the said suit. The record also shows that the petitioner appeared in the suit and participated therein. This went on for over six years. All this is sufficient to hold that there was a valid service upon the petitioner or in any case, the petitioner waived the requirement as to the receipt of writ of service.

5. After six years of participation in the suit, the petitioner sought for leave to file the written statement. There is hardly any satisfactory explanation for the enormous delay of over six years and seven months. The main contention is that since the petitioner was never served by a writ of summons, the period of limitation prescribed under Order 8 Rule 1 of the C.P.C. did not technically apply to the petitioner.

6. The provisions to which the petitioner adverts no doubt

provided that the time limit for filing the written statement will commence from the date of receipt of writ of summons. The purpose of such provisions is mainly to ensure that the defendants are granted sufficient time to file their written statement once they are served with the writ of summons and consequently, they have copies of the plaint and documents to which they are expected to respond to.

7. In the present case, however, there is absolutely no dispute that the petitioner, not only had knowledge regarding his impleadment as a defendant by order dated March 28, 2008, but further the petitioner had actually participated in the suit for over six long years without raising any objection that the writ of summons was never served upon him. The petitioner now wishes to stick to a mere technicality that there was no service of writ of summons upon him.

8. If such contention is to be accepted, then, this would merely amount to giving preference to procedure over substance. In the facts of the case, there is absolutely no prejudice to the petitioner on account of formal non service of the writ of

summons. It must be remembered that the procedure is the handmaid of justice and not its mistress. Similarly, there is nothing like a technical breach of the principles of nature justice. In such matters the party alleging breach has to demonstrate prejudice. In the present case, it is obvious that there was no prejudice whatsoever to the petitioner. These facts indicate that the petitioner expressly waived the receipt of formal writ of summons. Thus, construed that there is no jurisdictional error or perversity in the impugned order.

9. The two Courts have rightly held that there was no cause, much less any sufficient cause indicated by the petitioner to explain the delay of over six years and seven months in seeking leave to file the written statement. There is neither any jurisdictional error nor perversity involved.

10. Therefore, this petition is liable to be dismissed and the same is hereby dismissed.

11. In the facts of the present case, however, there shall be no order as to costs.

(M.S.SONAK, J.)