

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 9518 OF 2017

Kalavatidevi Mishra & Ors.

... Petitioners

Vs.

Satinder Singh Bhatia

... Respondents

Mr. H.S. Murthy a/w. Mr. Abhishek Patil I/b. Mr. Anand Nikhal,
Advocate for the petitioners.

Mr. Zubin Behram Kamdin i/b. Ms. Alisha Pinto, Advocate for
respondent nos. 1 to 4.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **25th July, 2018.**

P.C.:

Rule. Rule made returnable forthwith. By consent, the Writ
Petition is heard finally and decided at the stage of admission.

2. In this Writ Petition, the order dated 17th June, 2017 passed by the learned Judge of the City Civil Court, Greater Mumbai thereby dismissing the Notice of Motion No. 2990 of 2016 is challenged. The suit is pending since 2008. Earlier the suit was filed for possession before the Small Causes Court in the year 1999. It was contested by the father of the petitioner nos. 2 to 4, who was defendant. On the ground of jurisdiction, the plaint was returned and it was presented in the High Court in the year 2008. When the suit was filed, the defendant-father expired and therefore, Chamber Summons No.

1406 of 2008 was taken out by the respondents/plaintiffs to bring legal heirs of original defendant on record, which was allowed and thus in August, 2011 the defendants came on record, however, they did not file written statement thereafter.

3. The learned counsel for the petitioners has submitted that in the year 2012, due to enhancement of the pecuniary jurisdiction, the original side suits were transferred to City Civil Court and the present suit was one of them. He submitted that the counsel, who represented in the High Court was not known to the petitioners and thus nobody represented in the City Civil Court. He submitted that the petitioners were not properly served in the suit and ex-parte order was passed on 24th June, 2013. He submitted that the petitioners appeared in the matter and took out Notice of Motion to set aside "No WS" order and also prayed for condonation of delay. The learned counsel submitted that the written statement is already tendered by the petitioners and it is on record of the trial Court. The learned counsel submitted that it the suit for possession and the petitioners are to be allowed to file written statement.

4. While opposing the submissions, the learned counsel for the

respondents has submitted that the allegations that writ of summons was not served on the petitioners is false. There was proper service of writ of summons through bailiff on the petitioners. He submitted that there is no satisfactory reason given to condone the delay.

5. Heard the submissions and perused the impugned order. It is the suit for possession and therefore, fair opportunity needs to be given to the opponents to defend their case, as consequences are serious. There is undoubtedly a great delay in filing the written statement, however, I am informed that till today, the issues are not framed and therefore, in the interest of justice, I am inclined to allow this Writ Petition with the following order:

- (a) Writ Petition is allowed;
- (b) The order dated 17th June, 2017 passed by the learned Judge of the City Civil Court, Greater Mumbai in Notice of Motion No. 2990 of 2016 in Suit No. 4666 of 2008 is hereby set aside;
- (c) No WS Order is hereby set aside;
- (d) The written statement filed by the petitioners is to be accepted and to be exhibited subject to payment of cost of Rs.30,000/- which is to be paid on or before 30th

August, 2018 to all the respondents/plaintiffs, however, cheque can be issued to respondent no. 1 and handover to the counsel;

- (d) The trial Court to take note that the suit is old and therefore, it is to be tried and decided on or before 31st December, 2018. Parties to cooperate.

MRIDULA BHATKAR, J.)

Vidya
Suresh
Amin

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by Vidya
Suresh Amin
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