

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

WRIT PETITION NO.12184 OF 2016

Hotel Leelaventure Limited & Anr. .. Petitioners

Vs.

Green Park Co-operative Housing
Society Limited & Ors. .. Respondents

Mr.Malcom Sigonporia a/w Mr.Phiroze Merchant i/by Kanga & Co. for
the petitioners.

Ms.N.S. Moily for the respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 14th September 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 16th February 2016 passed by the learned trial Judge dismissing the notice of motion (3814 of 2004) filed by the petitioners (original defendant nos.5 and 6) inter alia praying for setting aside the order of hearing of the suit without their written statement dated 10th March 2014 passed by this Court and for condonation of delay of 974 days in filing the written statement.

2. Heard learned counsel appearing for the parties and perused the documents annexed to the petition. The petitioners were already served with writ of summons. The petitioners had requested this Court on 27th August 2007 to grant time till 8th October 2007 for filing written statement. The petitioners were accordingly granted time to file written statement on or before 6th October 2007. The matter was transferred from this Court to the City Civil Court in the year 2013. It is the case of the petitioners that the parties were negotiating for settlement since then

and thus no written statement could be filed within the time prescribed. The petition is vehemently opposed by the original plaintiff. He submits that the writ of summons was already served. He further submits that in any event, the petitioners had waived the writ of summons before the learned trial Judge. The petitioners have not justified the delay in filing the written statement. There is a delay of 974 days in filing the written statement. Issues are not framed by the learned trial Judge till date.

3. Learned counsel for the original plaintiff did not dispute that the negotiations between the parties were going on to settle the dispute amicably. In these circumstances, I am inclined to give an opportunity to the petitioners to file written statement within two weeks from today however on the condition that the petitioners pay costs of Rs.40,000/- as a condition precedent for filing the written statement on record.

4. The impugned order dated 6th February 2016 passed by the learned trial Judge is quashed and set aside on the condition that the petitioners pay costs of Rs.40,000/- as a condition precedent to the original plaintiff within two weeks from today. Copy of the receipt of payment of costs shall be produced before the learned trial Judge which shall be considered while taking the written statement on record. It is made clear that no further extension of time for filing written statement would be granted. Writ petition is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.