

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No.14235 OF 2018

Baldev Jaynath Gupta	...	Petitioner
V/s.		
Mr.Sheikh Abdul Kased & Anr.	...	Respondents

CIVIL APPLICATION NO.2617 OF 2018

IN

WRIT PETITION No.14235 OF 2018

Baldev Jaynath Gupta ... **Applicant**

In the matter between :

Baldev Jaynath Gupta	...	Petitioner
V/s.		
Mr.Sheikh Abdul Kased & Anr.	...	Respondents

• • • • •

Ms.Uma Sharma with Shri.Abhinandan Waghmare i/b.
Shri.Sanket P.Thorat, Advocate for the Petitioner/Applicant.

Mr.Chandrakant Chavan with Mr.Chaitanya D. Nene, Advocate for the Respondents.

• • • •

CORAM : M.S.SONAK, J.

DATED : 19th DECEMBER 2018.

P.C. :

1 Heard Ms.Uma Sharma for the Petitioner and
Mr.Chandrakant Chavan for the Respondents.

2 Ms.Sharma, the learned Counsel for the petitioner states that presence of respondent No.3 is not necessary for deciding the issue raised in this Petition. She accordingly seeks leave to amend the Petition. Leave, as prayed, is granted. Amendment be effected forthwith.

3 Rule.

4 Rule is made returnable with the consent and at the request of learned Counsel for the parties.

5 The challenge in this petition is to the Order dated 31/10/2018 by which the learned trial Judge has rejected the petitioner's application for leave to file written statement since the filing of the written statement was delayed by a period of 180 days.

6 The learned trial Judge has observed that the petitioner has adopted quite casual approach, since, the application for condonation of delay was not accompanied by any documentary evidence.

7 From the perusal of application seeking condonation of delay, it does appears that no document was produced along with it. However, there were pleadings that the petitioner had to visit his native place to attend the wedding of his brother's son. There

are also averments that there was some health issue concerning the applicant. There are also averaments about miscommunication with Advocates and the requirement to change the Advocate.

8 In this Court, the Petitioner has taken out the Civil Application seeking leave to produce documents. Ordinarily, such documents ought to have been produced before the trial Court itself. However, the documents produced include the wedding invitation card and some medical records. The medical records pertain to the Municipal Hospital and, therefore, can be accepted as an authentic document.

9 Taking into consideration the cause shown by the petitioner, some indulgence is required to be extended to the petitioner subject to compensating the respondent by way of costs. In matters of this nature, some lapse on the part of the parties seeking condonation cannot ruled out or is even inevitable. However, this does not appear to be a case of any malafide or a case where the petitioner intentionally intends to protract the proceedings before the trial Court.

10 For aforesaid reasons, yet another chance is granted to the petitioner subject to the payment of cost of Rs.10,000/- to the respondent Nos.1 and 2.

11 Accordingly, this petition is disposed of with the following Order :

ORDER

- (a) Impugned Order dated 31/10/2018 passed by the Judge, Court No.10, Court of Small Causes, Bombay below Exhibit 18 in R.A.E.Suit No.1039 of 2018 is set aside.
- (b) The petitioner is permitted to file his written statement before the trial Court on or before the next date fixed before the trial Court i.e. 24th January 2019 without fail. If such written statement is not filed on or before 24th January 2019, there shall be liberty to file written statement.
- (c) In case there is any difficulty in payment to respondent Nos.1 and 2, petitioner is at liberty to deposit this amount before the trial Court on before 18th January 2019. If such amount is deposited, the respondent Nos.1 and 2 are at liberty to withdraw the same unconditionally.
- (d) If the amount of costs is not paid or deposited as aforesaid, this petition shall be deemed to have been dismissed without any further reference to the, Court but with cost of Rs.10,000/-.

- 12 Rule is made absolute to the aforesaid extent.
- 13 All concerned to act on authenticated copy of this
Order.
- 14 Civil Application 2617 of 2018 is also disposed of.

(M.S.SONAK, J.)