

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO. 1010 OF 2017

IN

WRIT PETITION NO. 3000 OF 2012(D)

(MOHD. JAHIR MOHD. BASHIR...VS..BALLAM RAIBAN CHANNE.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.V.Bhide, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : JANUARY 15, 2018.

1. The applicant had filed writ petition challenging two orders passed by the trial Court:

- (i) Order rejecting the application filed by the petitioner/ plaintiff seeking permission to amend the plaint;
- (ii) Order passed by the trial Court rejecting application filed by the plaintiff to place on record additional affidavit in lieu of the evidence.

2. The application seeking permission to amend the plaint is rejected on the ground that the plaintiff has not been able to overcome the bar created by the proviso below Rule 17 of Order 6 of the Code of Civil Procedure.

The other application filed by the plaintiff seeking permission to place on record additional affidavit in lieu of the evidence is rejected on the ground that the plaintiff wants to place on record additional affidavit to bring on record his evidence to meet the contentions of the defendant in the written statement.

3. This writ petition was dismissed on 4th October, 2012. The applicant/ petitioner had filed Miscellaneous Civil Application St.No.17326 of 2012 praying for restoration of the writ petition. This Miscellaneous Civil Application was also dismissed in default on 26th November, 2012. The applicant/ petitioner had filed Misc. Civil Application St. No. 18268 of 2016 for restoration of Misc. Civil Application St. No. 17326 of 2012. As there was delay in filing Misc. Civil Application St. No.18268 of 2016, the applicant/ petitioner had filed Civil Application (CAO) No. 226 of 2017 praying for condonation of delay of 1367 days in filing Civil Application St. No.17326 of 2012. By order dated 14th July, 2017, Civil Application No.226 of 2017 and Civil Application St. No. 18268 of 2016 are allowed and the Misc. Civil Application St. No.17326 of 2012 is restored and it is registered as Misc. Civil Application No. 1010 of 2017.

4. Now, after more than six months this Misc. Civil Application No. 1010 of 2017 is circulated, the urgency as pointed out by the learned advocate for the applicant/ petitioner being that the civil suit is fixed on 16th January, 2018 (i.e. tomorrow) for recording of further evidence.

5. I find that the applicant/ petitioner has not been diligent in prosecuting the matter and it would not be appropriate to show any indulgence at the stage when civil suit is fixed for recording of further evidence.

The Miscellaneous Civil Application is **dismissed**.

No costs.

JUDGE