IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

WRIT PETITION No. 7055 of 2019

Amolkumar Navinchandra Patni ...Petitioner
Versus
State Bank of India,
Br. Darva road, Yavatmal and another ...Respondents

Mr. S.S. Patil, Advocate for petitioner

CORAM : RAVINDRA V. GHUGE, J.

DATE : 14th JUNE, 2019

PER COURT:

1. The petitioner/original plaintiff is aggrieved by the order dated 11th March, 2019 passed by the Trial Court, by which application Exh. 108 filed by defendant No.1 State Bank of India in special civil suit No. 84/2017 has been allowed. The said defendant is permitted to file the written statement subject to costs of Rs. 10,000/-.

2. The learned Counsel for the petitioner has strenuously criticised the impugned order. He submits that defendant No.1 was served with the Court notice on 27th March, 2017. The bank appeared before the Court on 20th April, 2017 and sought an adjournment. Again, the matter was adjourned on 20th June,

2017. 'No written statement' order was passed on 20th July, 2017. Thereafter, defendant no.1-bank was present before the Trial Court on 24th January, 2018, 20th April, 2018, 11th July, 2018, 30th July 2018, 10th August, 2018, 28th August, 2018, 12th September, 2018, 5th October, 2018, 22nd October, 2018, and 14th November, 2018. He further submits that during this period, the bank was pursuing the remedy against the petitioner under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In this backdrop, defendant No.1 could not have been permitted to file its written statement and that too, when meagre costs of Rs. 10,000/- has been imposed by the Trial Court. It is further stated that the conduct of the bank is not *bonafide* and no sympathy deserves to be shown.

3. Having considered the submissions of the learned Advocate for the petitioner and having gone through the petition paper book with his assistance, I find that defendant No.1-bank indeed had been granted sufficient opportunity to file its written statement. After the 'No written statement' order was passed on 20th July, 2017, it continued to remain present before the Trial Court. It was only on 7th February, 2019 that the bank filed the application Exh. 108.

4. Exh. 108 indicates that the bank was collecting certain documents. The assistance of the Police Department was taken to

recover certain documents. The authorised signatory of defendant No.1-bank was unavailable on account of a fracture suffered by him. The plaintiff has instituted a claim of Rs. 365 lacs against the defendant No.1. Non-filing of the written statement would virtually render the bank defence less and an irreparable loss would be caused to the bank.

5. I find from the impugned order that the Trial Court has considered the above aspects and has kept in view that since a huge claim of Rs. 365 lacs has been instituted against the bank, it would cause an irreperable damage to the bank if Exh. 108 was rejected. At the same time, by taking into account the delay caused by the bank, costs of Rs. 10,000/- have been imposed upon the bank.

6. Considering the above and in order to ensure that the bank gets an opportunity to defend itself against the claim of Rs. 365 lacs, the impugned order passed by the Trial Court is an equitable order and it cannot be termed as being perverse or erroneous or likely to cause gross injustice to the petitioner.

7. In view of the above, this petition, being devoid of merit, is dismissed.

(RAVINDRA V. GHUGE)
JUDGE

Madkar