

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 394 OF 2019**

Shri Chidambar R. Chanekar, s/o late
Ramesh Chanekar, aged 42 years, R/o Plot
No. A-21-A, Shri. Kamakshi Duplex
Bungalow, Vasant Nagar, Kare Hill, Gogol,
Margao, Goa.

.... Petitioner

Versus

1. Mr. Shirish Gadkar, s/o late
Ghanashayam A. Gadkar, aged 60 years,
2. Mrs. Milan Gadkar, Age 44 years, w/o
Mr. Shirish Gadkar,
Both residing at S-6, Fereira Garden,
Gogol, Margao, Goa.

.... Respondents

Mr. Mahesh Amonkar, Advocate for the Petitioner.

Ms. Analiz Maria Menezes, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 19th June, 2019

ORAL JUDGMENT:

Rule made returnable forthwith. The learned
Counsel for the respondents waives service. Heard finally by
consent of parties.

2. By this petition, the petitioner, who is the original
defendant, is challenging two orders, both dated 20.03.2019,
passed by the learned Trial Court in Regular Civil Suit No.
226/2018/C. By the first order, an application (Exhibit-6) filed
by the respondents/plaintiffs, under Order XV-A of the Code of

Civil Procedure (CPC, for short), has been allowed, directing the petitioner to deposit Rs.10,000/- per month as occupation charges, while by the second order, an application (Exhibit-10) filed by the petitioner, for extension of time to file written statement, has been rejected.

3. Undisputedly, there is a previous suit filed by the petitioner against the respondents being Regular Civil Suit No. 128/2016/D, in which, the petitioner is *inter alia* seeking mandatory as well as prohibitory injunction, against the respondents. The petitioner is seeking a direction to the respondents to restore the water supply and electricity connection in the suit premises and for restraining the respondents or anybody on their behalf from interfering with the suit premises. Undisputedly, in the said suit, the respondents have raised a counter claim *inter alia* for declaration that the leave and license agreement dated 22.03.2016 has expired by efflux of time. It is further a matter of record that the respondents had filed an application in the said suit also under Order XV-A of CPC and that application has been allowed, directing the petitioner to deposit Rs.10,000/- per month as occupation charges.

4. The respondents subsequently filed Regular Civil Suit No. 226/2018/C, for eviction and possession of the suit premises, against the petitioner. The record discloses that the suit summons in the said suit was served on the petitioner on or about 10.01.2019 and the returnable date was 19.01.2019. It is not disputed that the notice was not accompanied with the copy of the plaint. The petitioner appeared in the suit on 19.01.2019 and sought time to file written statement on the ground that the copy of the plaint was not accompanying the suit summons. The learned Trial Court granted time till 20.02.2019. However, prior to the said date, the petitioner filed an application on 16.02.2019, seeking time and the suit was adjourned to 25.02.2019. On that day, the learned Trial Court granted extension till 20.03.2019, which incidentally was the 60th day from the first returnable date. The petitioner filed an application (Exhibit-10) for further extension of time, on the ground that the Advocate for the petitioner was out of station and was unable to prepare the written statement, which has been rejected by the learned Trial Court by the impugned order dated 20.03.2019, on the ground that there were three extensions granted i.e. on 19.01.2019, 16.02.2019 and again on 25.02.2019.

5. I have heard Mr. Amonkar, the learned Counsel for the petitioner and Ms. Menezes, the learned Counsel for the respondents. Perused record.

6. As noticed earlier, it is not disputed that the suit summons was not accompanied with the copy of plaint. Thus, the petitioner had no option than to seek time on the first date i.e. on 19.01.2019. Thus, time granted on 19.01.2019, cannot be said to be by way of extension, as on that date the petitioner was precluded from circumstances beyond his control, from filing the written statement. On 19.01.2019, time was granted by the learned Trial Court till 20.02.2019. However, prior thereto, the petitioner had filed an application on 16.02.2019 for extension. It appears that the matter was fixed on 20.02.2019, on which date, the Presiding Officer was on leave and therefore, the suit was fixed on 25.02.2019. Thus, no extension can be said to be have been granted, as such, on 16.02.2019 and on 20.02.2019. Thus, for all practical purpose, on 25.02.2019 the first extension was sought, which was granted till 20.03.2019. The proviso to Rule 1 of Order VIII of CPC is directory and not mandatory and in an appropriate case, the Trial Court can permit the defendant to put his defence even beyond the stipulated period (see the case of **Kailash Vs.**

Nanhku & Others 2005 4 SCC 480).

7. The learned Counsel for the respondents, in all fairness, submitted that this Court may pass appropriate orders, in the context of the circumstances as obtaining from the record.

8. Considering the overall circumstances, I find that both the orders dated 20.03.2019, need to be set aside, granting opportunity to the petitioner to file the written statement in the suit and reply to the application under Order XV-A of CPC. This will be subject to the petitioner depositing costs of Rs.5,000/- payable to the respondents, within two weeks from today.

9. In the result, the following order is passed:

ORDER

- (i) The petition is allowed.
- (ii) The impugned orders dated 20.03.2019, below application (Exhibit-6) and application (Exhibit-10), are hereby set aside.
- (iii) The petitioner is permitted to file written statement in the suit, as well as reply to the application (Exhibit-6), within two weeks from today, subject to deposit of costs of Rs.5,000/- payable to the respondents.

(iv) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

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