

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10577 OF 2016

Ramchandra B. Gund .. Petitioner
vs.
Yogesh D. Douggal and ors. .. Respondents

Mr. Amol A. Deshpande a/w. Mr. Anand Bagawade for the
Petitioner.
Ms Shivani S. Samel for Respondent Nos.1 to 4.
Mr. Kaustabh Thipsay for Respondent Nos.23 to 26 and 31.

CORAM : M. S. SONAK, J.
DATE : 12 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. Amol Deshpande for the petitioner and
Ms Shivani Samel for respondent Nos.1 to 4 - contesting
respondents.

2] Learned counsel for the petitioner states that even
otherwise service is complete upon all the respondents. By
order dated 29th November 2018, it was made clear that this
petition will be disposed of finally at this stage of admission.

3] Accordingly. Rule. Rule is made returnable forthwith,
with the consent of and at the learned counsel for the parties
as also in view of the order dated 29th November 2018.

4] The challenge in this petition is to the order dated 25th November 2015 made by the learned Trial Judge which reads as follows:

“Order

Perused the application and say. Although there is delay to file W.S. by these defendant but to give justice and in the larger interest of justice this application is allowed subject to cost of Rs.700/- be given to plaintiff.

sd/-

CJSD, Pune “

5] The record indicates that defendant Nos.23 to 26, who are respondent Nos.1 to 4 in this petition were duly served with summons for settlement of issues, but chose not to file their written statement for an inordinate period of 2900 days.

6] At the stage when the evidence in the suit was quite advanced, defendant Nos.23 to 26 took out an application dated 24th June 2015 seeking the following reliefs:

“a) The written statement of these defendants may kindly be taken on record.

b) Delay if any may kindly be condoned.”

7] In the entire application, there was not even any acknowledgment regards the delay of 2900 days, much less any explanation or sufficient cause.

8] In paragraph 10 of the application dated 24th June 2015, this is also that defendant Nos.23 to 26 stated thus:

“Though, apparently it may appear that there is delay in filing written statement, however, the facts of this case clearly make out that, there is no delay and delay. However, if there is any delay same needs to be condoned.”

9] Based upon the aforesaid, learned Trial Judge was not at all justified in making the cryptic order bereft of any reason whatsoever condoning delay of 2900 days subject to payment of costs of Rs.700/-. The impugned order is *ex facie*, unreasonable and is required to be set aside.

10] Accordingly, the impugned order dated 25th November 2015 is hereby set aside. In the meanwhile, written statement filed by defendant Nos.23 to 26 have been taken on record, then the same are to be returned to the said defendants or in any case, completely excluded from consideration.

11] Rule is accordingly made absolute in the aforesaid terms. Defendant Nos.23 to 26 are directed to pay costs of

Rs.5000/- (Rupees Five Thousand) to the petitioner within a period of six weeks from today.

6] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)