

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6976 OF 2017

Parvati Zipru Gavli and ors. .. Petitioners
Vs.
Chhaya Shankar Dalal and ors. .. Respondents

Mr.Saurabh Oka, for the Petitioners.
Mr.Yatin Malvankar, for the Respondents No. 7 to 9.

CORAM : M.S.KARNIK, J.
DATE : 04th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioners.

2. Respondents No. 1 to 6 - original plaintiffs filed Suit for specific performance. The suit summons were duly issued to the petitioners who are the original defendants No. 1 to 11. There was delay of around one year in filing the written statement. An application below Exhibit 23 was filed by defendants No. 1 to 11 for condoning the delay and taking written statement on record. It is stated that 'No WS' order was passed on 16/09/2008. In the application Exhibit 23 it was stated that as the defendant was not keeping well & therefore

written statement could not be filed within time.

3. The application was opposed by the plaintiffs. The trial Court by order dated 15/11/2016 below Exhibit 23 rejected the application on the ground that no justifiable ground to allow the application was made out. Further it observed that no medical certificate is enclosed. By order dated 16/09/2008, the trial Court had passed an order that defendants No. 1 to 11 failed to file written statement even after availing ample opportunities. Hence, it was directed to proceed with the Suit exparte against them. The petitioners are also challenging this order of the trial Court. Though the respondents No. 1 to 6 – original plaintiffs are duly served, they have not appeared.

4. I have gone through the reasons mentioned in the Application Exhibit 23 and also reasons stated in the Petition that the petitioners were not aware of the order dated 16/09/2008 till 2016. It is only in the year 2016 that petitioners were served with the suit summons and therefore

there was delay of one year in filing the written statement. It is therefore submitted that the trial Court could not have passed the order dated 16/09/2008 and the same deserves to be set aside.

5. In my opinion, the right to defend the Suit should not be taken away only on account of delay of one year in filing the written statement in view of the explanation and also as the petitioners can be adequately compensated with cost.

6. In this view of the matter, the Petition is allowed in terms of prayer clauses (a) & (b) subject to payment of cost of Rs.15,000/- to be paid to the respondents No. 1 to 6 – original plaintiffs within a period of 2 weeks from today. The impugned orders are set aside. Cost to be deposited in the trial Court and liberty is granted to the plaintiffs to withdraw the cost.

(M.S.KARNIK, J.)