

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5992 OF 2017

M/s. Phoenix Developers ... Petitioner

Vs.

Shri Suresh Ramavtar Gupta & ors. ... Respondents

Mr. Tansim Moin i/b. M/s. ALJ & Partners for the Petitioner.
Mr. Santosh Parad for Respondents Nos. 2 and 3 (MCGM).

CORAM : N. J. JAMADAR, J.

DATED : 14th OCTOBER, 2019

P. C. :

. Heard the learned counsel for the petitioner.

2. The challenge in this petition is to an order dated 05.07.2016 passed by the Learned Judge, City Civil Court, Dindoshi, Mumbai in Notice of Motion No. 1230 of 2016 in L.C.Suit No. 3208 of 2015 whereby the Learned Judge was persuaded to allow and thereby quash and set aside the “No say” order passed on 02.04.2016 and permit the plaintiffs to file reply to the Notice of Motion No. 361 of 2016 and Notice of Motion No. 362 of 2016, taken out by the petitioner herein.

3. Learned Counsel for the petitioner submitted that the plaintiff by an application dated 02.04.2016 had sought extension of time of two weeks to file reply to the application (Exhibit-7 & 8) on the ground that on account of malfunctioning of the computer, the reply could not be prepared and filed. However, the Learned Judge by an order dated 02.04.2016 had rejected the said application for adjournment and further directed that the Notice of Motion No. 361 of 2016 and Notice of Motion No. 362 of 2016 taken out by the petitioner – defendant No.3, shall proceed without reply of the plaintiff. The plaintiff by Notice of Motion No. 1230 of 2016, sought to set aside the said order of “No say” on the selfsame ground that computer of the learned advocate for the plaintiff had developed some technical fault, therefore, reply could not be prepared and filed in time. By the impugned order the Learned Judge was, however, impelled to allow the Notice of Motion on those very same grounds, for which an adjournment was expressly rejected.

4. From the perusal of the impugned order it become evident that the Learned Judge was of the view that the plaintiff had assigned justifiable reasons for failure to file reply to the Notice of Motion No. 361 of 2016 and Notice of Motion No.362 of 2016. It was further observed that the Notice of Motion was taken out by the plaintiff without any loss of time after the passing of the “No say” order dated 02.04.2016.

5. In this view of the matter, though the ground mentioned in the application dated 02.04.2016 and Notice of Motion No. 1230 of 2016 for setting aside the “No say” order appears to be identical, having regard to the fact that the Learned Judge has taken a view which advances the cause of justice and promotes the determination of the lis on merits, in exercise of the writ jurisdiction no interference is warranted in the impugned order.

6. The further submission of the Learned Counsel for the petitioner that, despite the impugned order, there has not been any progress in hearing of the Notice of Motion No. 361 of 2016 and Notice of Motion No. 362 of 2016, has some substance. Once, the plaintiff is permitted to file reply to Notice of Motion No. 361 of 2016 and 362 of 2016, it is imperative that the Notice of Motion shall be decided expeditiously.

7. In view of the above, it would be in the fitness of the things to direct the Learned Judge, City Civil Court, Dindoshi, Mumbai to decide the Notice of Motion No. 361 of 2016 and Notice of Motion No. 362 of 2016 as expeditiously as possible. With the aforesaid observations the petition stands dismissed.

(N. J. JAMADAR, J.)