

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12472 OF 2015

Mr. Harkishan Chhotalal Wadhwana ... Petitioner

Vs

Mr. Narendra Chhotalal Wadhawana ... Respondent

...

Mr. Bipin A. Vora for the Petitioner.

None for the Respondent.

CORAM : SANDEEP K. SHINDE J.

DATE : JUNE 24, 2019

P.C. :

Heard learned counsel for the petitioner.

2 Petitioner is defendant in the Suit No.4326 of 1993. His brother Narendra Chhotalal Wadhwana respondent herein, instituted Suit No.4326 of 1993 in this Court seeking decree under Section 34 of the Specific Relief Act, 1963 denying his brother's right, title and interest in the suit flat, i.e., Flat No.2, 'D' Wing, Arihant Siddhi Co-operative Housing Society Ltd., Borivali (West), Mumbai 400 092. The suit was transferred to City Civil Court, Bombay in the year 2015 and re-numbered as Suit No.9640 of 1993 . The suit was again transferred to City Civil Court at Dindoshi and re-numbered as Suit

No.2669 of 2015.

3 The petitioner did not file the Written Statement within thirty days from service of suit summons, however, subject to cost of Rs.5,000/-, he was allowed to file it vide order dated 26th November, 2012 .

4 The draft motion taken out by the petitioner in the year 2015 seeking condonation of delay occurred in filing counter-claim has been declined by the learned Judge vide order dated 19th March, 2015. The learned Judge found the reasons put-forth for condoning the delay caused in filing the counter-claim were not sufficient in-as-much as petitioner contended that for want of proper advice, counter-claim could not be filed before he delivered his defence in the year 2010. Aggrieved by the order dated 19th March, 2015, this Petition is preferred under Article 227 of the Constitution of India.

5 It may be stated that the suit is instituted in 1993 wherein the Written Statement was allowed to be filed in the year 2012 after condoning the delay. Nearly three years thereafter petitioner requested and prayed that he may be permitted to file the

counter-claim. In my view, reasons putforth for condoning the delay occurred in filing counter-claim belatedly were not sufficient and, therefore, no interference is called for in the order dated 19th March, 2015 passed by City Civil Court.

6 I have perused the Written Statement wherein it is defendant's case that suit flat is joint family property and the petitioner/defendant is ready and willing to give plaintiff his share in the suit flat and other joint family properties.

In paragraph 13, the defendant has stated thus;

“13. The Defendant says and submits that the suit flat and other properties stated hereinabove are joint family and/or Hindu Undivided Family properties. The defendant is ready and willing to give the plaintiff his share in the suit flat and other joint Hindu Undivided Family properties on his guarantee to release remaining shares in favour of the Defendant and other legal heirs.”

7 In paragraph two of the Written Statement, it is petitioner's assertion that his father had contributed Rs.22,000/- for purchasing suit flat and in paragraph 4, the petitioner has stated that the suit flat was purchased from the 'joint family business', of tailoring.

. Thus after reading the Written Statement, it is

defendant's case that flat being 'joint family property', he has equal share therein.

8 The Plaintiff (Respondent herein) seeks declaration of his title to the suit property, by denying his brother's right therein. This material proposition of fact affirmed by the plaintiff is denied by the defendant in the defence, contending suit property is property of family, purchased out of income of family business of tailoring and part consideration has been contributed by his father. In view of the facts, affirmed by the plaintiff and denied by the defendant, Trial Court shall frame, relevant issue under XIV of the Code of Civil Procedure, 1908. If such issue is framed, no prejudice would be caused to petitioner.

9 The learned Judge is requested to frame the appropriate/relevant issue and conclude the trial expeditiously as it is pending since 1993.

10 Petition is disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)