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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10360 OF 2015

Wing Commander Ajai Sharma (Retd) & Anr. ..Petitioners.
V/s.
Jaisingh Punia & Anr. ..Respondents.

None for the petitioners.

Ms.Aruna G.Kali for respondent Nos.1 & 2.

CORAM : M.S.SONAK, J.

DATE : MARCH 26, 2019

ORAL JUDGMENT

None for the petitioner. Ms.Koli, learned counsel appears for respondent Nos.1 and 2-original plaintiffs.

2. Rule. Rule made returnable forthwith with the consent of learned counsel appearing for respondent Nos.1 and 2.

3. Challenge in the petition is to the order dated August 13, 2014 by which learned trial Judge has declined to condone the delay in filing the written statement.

4. From the perusal of record, it is apparent that the impugned order comprises of four paragraphs. The first paragraph

states that the application is perused and both the counsel are heard. The second paragraph notes in brief the reasons set out by the petitioner in the application seeking condonation of delay and leave to file the written statement. The third paragraph notes the contentions on behalf of the plaintiffs. The fourth paragraph of the impugned order reads thus:-

“4. Admittedly summons was served on 29/04/2013. Defendants demanded copy from plaintiff which the plaintiff denied to have. Thereafter defendants not sought time to file say and written statement. Nothing is mentioned by the defendants about the original memorandum of understanding at the time of filing this application. Delay to file written statement is not properly explained. The reason given for delay is not satisfactory and sufficient to condone the delay. Hence the application is rejected with costs.”

5 According to me, this is not at all a proper manner to deal with the application seeking condonation of delay and leave to file written statement. The learned Judge has only recorded the conclusion without any reasons in support. From the perusal of the application seeking condonation of delay and affidavit filed in support thereof, it cannot be said that there was no sufficient cause shown by the petitioner for condonation of delay.

6. The petitioner in his application had explained that he was

required to file criminal complaint against the plaintiff because he was forcibly dispossessed from the suit premises. He has stated the steps taken in the suit in order to show that he was diligent in pursuing the suit. There is also reference to the memorandum of understanding in the plaint itself, though, the impugned order states that there is no such reference. The petitioner refers to delay as 185 days on the basis that the petitioner has 90 days time to file the written statement. However, as was pointed out by Ms.Koli, the written statement was required to be filed within 30 days from the date of service of summons and if only the period is extended, the extended period is to be taken into consideration. Further, in this case, it is necessary to note that the petitioner is a retired defence personnel. This aspect has some relevance for the issue of considering whether sufficient cause has been made out or not.

7. Since there was sufficient cause shown, learned trial Judge was not right in rejecting the application for condonation of delay and leave to file the written statement in the manner in which he has. No doubt, the respondents will be prejudiced if the delay is condoned, in the sense their suit will be delayed. However, as submitted by Ms.Koli, respondent Nos.1 and 2 are already in possession of the suit premises in respect of which the specific performance is claimed. This is, therefore, not a case where prejudice that will occasion respondent Nos.1 and 2,

cannot be compensated in terms of costs.

8. On the cumulative consideration of the aforesaid, this petition is disposed of by passing following order :-

- a) The impugned order dated August 13, 2014 is set aside and the petitioner's application Exhibit Exhibit-42 in Special Civil Suit No.43/2013 seeking condonation of delay as well as leave to file the written statement is hereby allowed;
- b) The aforesaid is, however, subject to the petitioner paying costs of Rs.25,000/- to respondent Nos.1 and 2 within a period of four weeks from the date this order is uploaded on website, served / made known to the petitioner;
- c) The parties to appear before the trial Judge on April 15, 2019 at 11.00 a.m. Respondent Nos.1 and 2 herein to appear and produce an authenticated copy of this order before the learned trial Judge;
- d) Learned trial Judge upon receiving the authenticated copy of this order would issue notice the petitioner, so that the petitioner can pay the costs of Rs.25,000/- within the period of four weeks from that date;
- e) If the petitioner fails to pay the costs within a period of four weeks as aforesaid, then, this petition shall be deemed to have

been dismissed without any further reference to this Court;

- f) In case there is any difficulty in payment of costs to respondent Nos.1 and 2, the petitioner is at liberty to deposit the costs in the trial Court and thereafter, respondent Nos.1 and 2 are granted liberty to withdraw the costs unconditionally.
- g) Rule is made absolute in aforesaid terms.

9. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)