

Nalawade

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

WRIT PETITION NO.1116 OF 2020

Vasanti R.Kamath and ors.

...Petitioners.

Vs.

Nandkishore C. Chourasia and ors.

...Respondents.

Mr. Shreepad Murthy i/by S.P.Patankar for the Petitioners.

Mr. Yatin R.Shah for the Respondent Nos.1 and 2.

Mr. Abhishek R.Patil for Respondent Nos. 3.

CORAM : REVATI MOHITE DERE, J.

DATE : 13th FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioners have impugned the order dated 6.1.2015, passed by the learned Judge, City Civil Court, Greater Mumbai in *Notice of Motion No.2178 of 2014 in S.C. Suit No.4636 of 2010*, by which, the petitioners' Notice of Motion seeking condonation of delay of 1307 days in filing the written statement was rejected.
3. Learned counsel for the petitioners submits that, although the written statement was prepared, signed and notarized on 17.1.2012, the

same could not be filed in time, as the petitioners, were constrained to change three advocates appearing on their behalf. He further submits that, even during the intervening period, the proceedings were transferred from the High Court to the City Civil Court. He submits that till date there is no order of “No Written Statement” passed by the Trial Court in the said suit.

4. Learned counsel for the respondent Nos. 1 and 2 (original plaintiffs) opposed the petition and submitted that, no interference is warranted in the said order.

5. Perused the papers. The Respondent Nos. 1 and 2 are the original plaintiffs, who had filed a civil suit, initially in this Court being Suit No.2832 of 2010 as against the petitioners and respondent No.3. It appears that, due to the change in pecuniary jurisdiction, the said suit was transferred from the High Court to the City Civil Court and the said suit was renumbered as Suit No.4636 of 2010. The respondent Nos. 1 and 2 (original plaintiffs) have filed the said suit seeking specific performance of the alleged agreement for sale executed between the respondent No.1 and 2 and respondent No.3. It appears that the petitioners’ written statement was duly prepared, signed and notarized on 17.1.2012. It appears that, during the said period, when the suit was pending in the Trial Court, the

petitioners changed three Advocates. According to the petitioners, they were dependent on their lawyers, and following their advise, since they had entrusted the case to them. It appears that, till date, the Trial Court has not passed any order of “No Written Statement”. It is only later, sometime in June, 2014, the petitioners filed a Notice of Motion seeking condonation of delay of 1307 days in filing their written statement which was duly prepared, signed and notarized on 17.1.2012. They also prayed that their written statement be taken on record. Affidavit in support of the Notice of Motion was filed setting out all the details therein. A perusal of the affidavit in support of the Notice of Motion shows that the petitioner had shown sufficient cause for condoning the delay, in the facts of this case.

6. Considering the aforesaid, the petition is allowed and the impugned order dated 6.1.2015 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No.2178 of 2014 filed by the petitioners in S.C. Suit No.4636 of 2010 is quashed and set-aside, subject to the petitioners’ paying total cost of Rs.25,000/- to the respondent Nos. 1 and 2 within three weeks from today.

7. The petitioners are permitted to file their written statement

dated 17.1.2012 in the Trial Court within three weeks from today. If the original written statement is not found in the record of the Trial Court, the petitioners are permitted to reconstruct the same and place the said written statement on record of the Trial Court. Learned counsel for the respondent Nos. 1 and 2 states that he has no objection for reconstruction of the original written statement. On the written statement being filed, the learned Judge to proceed with the case.

8. Petition is disposed of in the aforesaid terms.
9. All parties to act on an authenticated copy of this order.

REVATI MOHITE DERE, J.