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

WRIT PETITION NO.482 OF 2020

Sunil Maruti Palaskar

...Petitioner

Versus

State of Maharashtra and Ors.

...Respondents

Mr. R.R. Tripathi, for the Petitioner.

Mr. S. L. Babar, A.G.P. for the Respondent No.1.

Mr. Jaydeep Raut i/b Shroff and Co., for the Respondent Nos.2 and 3.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th JANUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 4th November, 2019, passed by the learned Civil Judge Senior Division, Thane, below Exhibit – 48 in Special Civil Suit No.513 of 2015, by which the petitioner's application for setting aside 'no w.s. order' dated 11th December, 2015, was rejected.
3. Learned Counsel for the Petitioner submitted that the petitioner had shown sufficient cause for filing the application belatedly, however, despite the same, his application was rejected. He submits that the

petitioner be given one opportunity to file his written statement, subject to costs.

4. Learned Counsel for the Respondent Nos. 2 and 3 oppose the petition. He submitted that no interference was warranted in the impugned order. He submitted that the 'no w.s. order' was passed on 11th December, 2015, whereas the application was filed by the petitioner after more than 3 ½ years i.e. on 30th September, 2019. He submitted that even the application filed for setting aside the 'no w.s. order' is bereft of any details for setting aside the same. According to the learned counsel in the facts, no interference is warranted in the impugned order.

5. Perused the papers. The respondent nos. 2 and 3 are original plaintiffs who had filed Special Civil Suit No.513 of 2015, in the Court of the learned Civil Judge Senior Division, Thane, in 2015 for Declaration and Specific Performance of an Agreement dated 17th April, 2015. It appears that despite service the petitioner did not appear and hence 'no w.s. order' was passed by the learned Judge on 11th December, 2015. Thereafter, the petitioner appeared before the trial Court on 25th August, 2016, however, failed to file his written statement or any application for setting aside the 'no w.s. order' passed on 11th December, 2015. It appears that the

petitioner appeared through another advocate in April 2019 and again failed to file any application for setting aside the 'no w.s. order'. For the first time the petitioner filed an application on 30th September, 2019, wherein the petitioner prayed for setting aside the 'no w.s. order' dated 11th December, 2015. The said application was strongly resisted by the Respondent Nos. 2 and 3. A perusal of the application dated 30th September, 2019, filed for setting aside of 'no w.s. order' shows that the said order is bereft of any details. The said application is on page 17 of the present petition. The averments made in the said application are vague. No specific dates have been set out in support of the averments made in the said application.

6. The Apex Court in the case of ***Mohammed Yusuf v/s Faij Mohammad and Others***¹ has in para 11 referred to the three-Judge Bench of the Apex Court in the case of ***R.N. Jadi & Bros. v/s Subhashchandra***².

The said paragraph 11 of the aforesaid Judgment reads as under:-

*“11. The matter was yet again considered by a three-Judge Bench of this Court in **R.N. Jadi & Bros. v/s Subhashchandra**. P.K. Balasubramanyan, J., who was also a member in **Kailash v. Nanhku**,³ in his concurring judgment stated the law thus: (**R.N. Jadi case, SCC p.428, paras 14-15**)*

1 (2009) 3 SCC 513

2 (2007) 6 SCC 420

3 (2005) 4 SCC 480

14. *It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knockouts. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in **Kailash v. Nanhku** which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigour of that provision or to mitigate genuine hardship. It was in that contest that in **Kailash v. Nanhku** it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time-limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. **Kailash** is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.*
15. *A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, will the breach thereof will be condoned. Such an approach by*

*courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in **Allen v. Sir Alfred McAlpine & Sons Ltd**⁴ that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"*

7. Having regard to what is stated aforesaid, if the said application is allowed, which is completely bereft of any details and is belatedly filed i.e. after more than 3 ½ years, it would defeat the object sought to be achieved by the amendments to the Code. The jurisdiction of this Court under Article 226 and 227 of the Constitution of India is limited, i.e. it can set aside orders essentially on the grounds of illegality, irrationality, perversity, procedural impropriety etc.

8. In the present facts, no infirmity can be found in the impugned order dated 4th November, 2019, passed by the learned Civil Judge Senior Division, Thane, below Exhibit – 48 in Special Civil Suit No.513 of 2015, warranting interference in writ jurisdiction.

9. The Petition is dismissed and accordingly disposed of.

REVATI MOHITE DERE, J.

4 (1968) 2 QB 229