

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3346 OF 2021

Srikala Ramchandra Pillai .. Petitioner

Vs.

Madhavitai Arun Rane & Ors. .. Respondents

...

Mr. K.N. Kandekar for the petitioner.

Mr. Durgaprasad Sabnis with Ms. Kajal Hindalekar for
respondent No.1.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 28TH OCTOBER, 2021.

P.C:-

1. The petition is filed by the petitioner, who is aggrieved by the order passed by the Additional Chief Judge of the Small Causes at Mumbai in Municipal Election Petition No.105 of 2017, where his application filed for condonation of delay in filing written statement is rejected.

2. To briefly set out the background, the petitioner is an elected candidate, who is elected from Ward No.57 of the

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Municipal Corporation of Greater Mumbai in an election held in 2017, the result of which was declared on 23/02/2017. His opponent one Ms. Madhavitai Rane instituted an election petition under Section 33(2) of the Mumbai Municipal Corporation Act, 1888 on 06/03/2017 calling the election of the present petitioner in question and praying for setting aside his election as being null, void and nonest.

3. Summons being issued in the election petition and the respondents being impleaded, respondent No.1 was served on 01/04/2017 and he filed appearance on 24/04/2017. In terms of Order 8 Rule 1 of the CPC, he ought to have filed written statement within 30 days from the date of service of summons. He however, failed to do so. Defendant No.10 to the election petition, moved an application under Order 7 Rule 11 of the CPC for rejection of the plaint on 02/11/2018 and the said application was rejected on 05/10/2018. Even respondent No.1 moved an application for rejection of plaint on 02/11/2018, which was rejected on 08/02/2019. Thereafter, the petitioner woke from the slumber and moved an application vide Ex-42, seeking condonation of delay of 828 days in filing written statement and the reasons set out in the application is to the effect that the application moved under Order 7 Rule 11 for rejection of the plaint and for striking out the pleadings was pending before the court and it was rejected only on 08/02/2019 and since the application was kept pending by the court for 626 days, the

written statement could not be filed in time. The blame is sought to be put upon learned Judge by specifically pleading in para 11 of the application that had the application been expeditiously decided by the court, then there could have been no delay in filing the written statement. Further delay in bringing the application for condonation of delay, which is filed on 27/08/2019 is attributed to the advocate on record and it is averred that the advocate was suffering from illness and was not attending the court, which caused the further delay.

4. It is this application, which was taken up for consideration by the judge of the Small Causes Court at Bombay in the election petition and on consideration of the claim of the petitioner, in justifying the delay caused in filing the written statement, learned Judge has adverted his attention to the reasons. The learned Judge has recorded that respondent No.10 moved an application for rejection of plaint and, thereafter, even respondent No.1 moved an application through the same advocate. The pendency of the application for rejection of plaint is not accepted as the excuse in filing written statement along with the application for condonation of delay. Learned Judge has specifically observed that no explanation has been offered by respondent No.1 for not filing the written statement within the stipulated period. It is also recorded that by making such frivolous application, he is delaying the hearing and thereby costs of Rs.5,000- has also been imposed, to be credited to the

Government Treasury.

5. On hearing learned counsel for the applicant, who has pressed into service the judgment of the Hon'ble Apex Court in **Salem Advocate Bar Association, Tamil Nadu v. Union of India** reported in **AIR 2005 SC 3353** and since he is insistent that paragraph No.22 of the said judgment should be referred to. On reading paragraph No.22, the observations of Their Lordships are to the following effect and I deem to reproduce the same.

“The Court has wide power to make such order in relation to the suit as it thinks fit. Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.”

6. Needless to state that the Code of Civil Procedure has undergone a substantial amendment in the year 2002, with a view to curb the procedural delays and Order 8 Rule 1 is one such provision which underwent drastic change and the time for

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filing written statement is constricted to 30 days from the date of service of summons however, to undo the injustice to the parties, it is appended with a proviso which provides for further time to be extended beyond 30 days, but in any case, it shall not be beyond 90 days from the date of service of summons.

7. Sufficient leniency has been shown to the parties, who has plausible reason for not filing the written statement within 30 days and the court can then exercise discretion subject to the maximum limit of 90 days. However, when this power has to be exercised, it shall not be exercised at the drop of the hat and for the sake of asking. The Apex Court in the case of **Salem Advocate Bar Association (supra)** has made it clear that when the legislature has intended the maximum timeline not to extend beyond 90 days for filing written statement, the court exercising discretion beyond the said period, shall only do so when a hard case is placed before it.

8. Here is a litigant, who patiently waited the outcome of the co-defendant's application, who had moved the court for rejection of plaint at a later stage and surprisingly, through the very same advocate approached the court by filing a similar application seeking condonation of delay in filing written statement, which met with the same fate. A party, who does not adhere to the principles of law though procedural, shall not complain about the injustice to him, if he does not act within the

prescribed time schedule as set out in law.

I see no reason to grant any indulgence to the petitioner as the learned Judge has rightly ousted him by recording his conduct and finding that no ground exist to condone the delay in exercising his discretion in filing written statement beyond 90 days.

The impugned order is upheld. The writ petition is dismissed.

[SMT. BHARATI DANGRE, J.]