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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8954 OF 2019

Municipal Corporation of Greater Mumbai .. Petitioner

Versus

Pukharaj A. Mehata Sole Proprietor of M/s.
Mehata Enterprises .. Respondent

.....

Mr. Santosh Parad, Advocate for the Petitioner - MCGM.

Mr. Sharad Wakchoure i/by. Mr. Kishore Thakordas & Co. for the
Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 03 2021.

P.C.:

Heard Mr. Parad, learned counsel for the petitioner corporation
and Mr. Wakchoure, learned counsel for the respondent.

2. By this petition filed under Article 226 and 227 of the
Constitution of India, the petitioner has challenged the order dated
21.01.2019 passed by the Bombay City Civil Court, at Mumbai in
Notice of Motion No.4705 of 2018 in L.C. Suit No.7796 of 2001 filed
by the respondent against the petitioner. The suit is filed in the year
2001 for recovery of a sum of Rs.50,15,702.86.00 along with interest
in respect of a contractual claim of the respondent against the
petitioner corporation.

3. The respondent i.e. the plaintiff in the above suit has filed its affidavit of evidence on 10.12.2014 and the trial has commenced. It is only thereafter i.e. in December 2018, the petitioner i.e. the corporation has taken out notice of motion for seeking condonation of delay and accepting its written statement on record.

4. Respondent has asserted that, in view of the amended provisions of Order 6 Rule 17 of the Code of Civil Procedure, 1908 (as amended), the written statement of the petitioner corporation cannot be filed and admitted especially in view of the order dated 14.08.2018 passed by the Bombay City Civil Court relegating the suit to the list of 'undefended suits'.

5. Learned counsel for the respondent submitted that pursuant to the filing of affidavit of evidence in the year 2014 and the relevant documents, the cross-examination of the respondent's witness is pending before the Bombay City Civil Court as on date. In the meanwhile without prejudice to their respective rights, both the parties have also agreed to settle the *lis*. Be that as it may, the issue before the Court is challenge to the order dated 21.01.2019.

6. Perused the material on record.

7. In view of the time lapses which can be enumerated from the dates mentioned hereinabove the written statement of the corporation is hopelessly time barred and as stated in the impugned order, cannot be accepted / admitted by the Court. Today the learned counsel appearing for the petitioner corporation has reiterated its submission before the trial Court that the corporation is willing to pay the costs; such submission is in the abstract because if the Court imposes heavy costs on the corporation, the corporation will not be in a position to pay the same considering the *lis* between the parties. Every infraction of law cannot be cured by payment of costs.

8. The above submission has been rightly rejected by the learned trial Judge while passing the order dated 21.01.2019. Considering that the trial has also commenced as recorded in the order, it shall be open to the petitioner corporation to put such relevant questions in cross-examination to the plaintiff's witnesses during the trial.

9. In view of the above, the order dated 21.01.2019 is confirmed.

10. Writ petition accordingly stands dismissed with no order as to costs.

[MILIND N. JADHAV, J.]