

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

WRIT PETITION NO. 12460 OF 2019

Sind Co-operative Housing Society

.. Petitioner

v/s.

Mr. Ganesh Ghisulal Saundagar & Ors.

.. Respondents

Counsel Mr. Girish Godbole with Falguni Thakkar i/b. DSK Legal for the Petitioner.

Mr. Anwar Shaikh a/w. F.M.Shaikh and Aslam Shaikh for the Respondent No.1.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 30th MARCH, 2021.**

P.C. :

1. The Petitioner herein has challenged the orders dated 14.12.2017 and 19.10.2018 whereby learned Judge dismissed the application to condone the delay in filing written statement to the counter claim.
2. Heard Shri Godbole, learned Counsel for the Petitioner and Shri Shaikh, learned Counsel for the Respondent. I have perused the records.
3. The records reveal that on 4.4.2017 the trial Court had called upon the Plaintiff to file the written statement to the Counter claim filed by the Defendant. The Plaintiff did not file the written statement, and by application dated 14.12.2017, sought extension of time to file written statement. The said application was rejected on the same day on the

ground that the time for filing written statement has already lapsed. It is seen that despite the said order, the Plaintiff filed another application on 11.1.2018 with a similar prayer. Curiously enough, the trial court granted the said application and allowed the Plaintiff to file the written statement even though a similar request was earlier rejected on 14.12.2017. The Plaintiff did not file the written statement and by application dated 16.3.2018 sought further extension of time to file the written statement, which request was rejected by order dated 16.3.2018.

4. Shri Godbole, learned Counsel for the Petitioner claims that the delay was mainly due to the negligence of the Advocate appointed by the Petitioner. Whereas, Shri Shaikh, learned Counsel for the Respondent contends that the Petitioner has been negligent. He submits that the Plaintiff has not made out sufficient cause for condoning the delay. He has relied upon the decision of the Apex Court in ***Atcom Technologies Ltd. vs. Y.A. Chunawala & Co. & Ors. 2018 DGLS (SC) 430***, wherein the Apex Court had set aside the order of the High Court condoning the delay of 15 years and 54 days in filing the written statement, without convincing and cogent reasons.

5. Ld. Counsel for the Respondent has also relied upon the decision of this Court in ***Kanta Abab Shanti Karkale vs. Mangalabai Tarare. (Civil Application No.19 of 2015 in Second Appeal St.No. 22803 of 2017)*** wherein the Id. Single Judge of this Court has decided to condone the delay of 20 years in filing the second appeal. The

other two decisions reported in 2012 (2) ALL MR 269 and 2004(2) Mh.L.J. 1058 are distinguishable and not relevant to decide the issue.

6. It is a settled proposition that the provisions under Order 8 Rule 1 CPC are directory and not mandatory. It is equally well settled that time to file the written statement cannot be extended in a casual and routine manner but can be extended only in exceptional cases for cogent and convincing reasons.

7. In the instant case, the trial Court had called upon the Plaintiff to file the written statement on 4.4.2017. The records reveal that the Plaintiff did not file the written statement to the counter claim within the stipulated time and the application for extension of time was dismissed on 14.08.2017. The records reveal that during the interregnum period from 4.4.2017 till 14.8.2017 the Plaintiff had contested the application under Order 7 Rule 11 CPC as well as application under Order 39 Rule (1) CPC filed by the defendant.

8. It is true that there is considerable delay in filing the application for extension of time. The Petitioner attributes the delay to its advocate. The Petitioner claims that the delay was caused due to laxity of its advocate in handling the matter and refusal to grant NOC to engage another lawyer. The Petitioner urges and rightly so that it should not be penalized for the negligence of its Advocate.

9. Be that as it may, the Petitioner has filed the suit for cancellation of the Sale Deed dated 6.1.2015 executed in favour of the Defendant No.1, whereas relying upon the said Sale Deed, the Defendant No.1

has sought a declaration that he is the owner in possession of the suit property. The issues raised in the plaint and the counter claim are inter linked. Proceeding with the matter without giving an opportunity to the Plaintiff to file the written statement to the Counter claim will result in defeating the suit filed by the Plaintiff, without putting it to trial. Under the circumstances, and in the interest of justice, the delay is required to be condoned by subjecting the Plaintiff to costs.

10. Under the circumstances, Order dated 14.12.2017 is hereby set aside. Plaintiff is permitted to file written statement to the Counter claim on or before 15.4.2021, subject to payment of costs of Rs.50,000/- to be paid to the Defendant No.1.

11. Petition stands disposed of in above terms.

(ANUJA PRABHUDESSAI, J.)