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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11916 OF 2019

PHARANDE PROMOTERS AND BUILDERS
AND OTHERS

....PETITIONERS

V/s.

RAJESH RAJIBHAI DOSHI

.....RESPONDENT

Mr. Dormaan J. Dalal for the petitioners
Mr. K. A. Bhatia for respondent

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 31, 2021.

P.C.:

1] Petitioner-defendants in Special Civil Suit No. 1048 of 2013 for specific performance under section 14 of the Specific Relief Act, were proceeded without W.S. Their prayer for permission to file written statement and condoning the delay, moved through exhibit 32 came to be rejected vide impugned order dated 22/08/2019.

2] Order impugned is assailed alleging misunderstanding as to the

date when the suit proceeded without W.S. My attention is invited to the Rozanama dated 18/03/2017 so also order passed below exhibit-1 dated 27/11/2018, that is Plaint wherein suit was directed to be proceeded without W.S. Further contention of Mr.Dalal, learned counsel for the petitioner-defendant is, even if the defendant nos. 1 & 2 have appeared on 04/08/2014, documents were supplied by respondent-plaintiff on 11/11/2016 and as such, time was required to study said documents. Further contention is, partner Mr Ramesh Salian who was looking after the proceedings have resigned and as such proceedings went unattended for want of appropriate information from the said partner because of communication gap.

3] As such, Mr. Dalal, while trying to make out a case would urge that delay caused in placing on record written statement is unintentional and as such this Court may put petitioner to stringent conditions while considering the prayer for setting aside order of no W.S.

4] While drawing support from apex court judgment in the matter

of **Mohammed Yusuf V/s. Faj Mohammad and others [(2009) 3 Supreme Court Cases 513]**, he would urge that Court needs to be sensitive to the right of the petitioner to set up his lawful defence.

5] While countering the aforesaid submissions, counsel for the plaintiff respondent would urge that trial court has rejected the prayer based on views expressed by the Supreme Court. According to him, Order 8 of Code of Civil Procedure, 1908 are construed strictly to mean that in case if there is failure to file written statement within period of 30 days, extension could be granted only upto 90 days that too from the date of service of summons for *bona fide* reasons. According to him, delay of almost about 4 years in filing written statement is unexplained and as such Court was justified in rejecting the prayer.

6] I have considered rival submissions.

7] The fact remains that pursuant to service of suit summons on defendant Nos. 1 and 2 appearance was entered on 04/08/2014,

however it is claimed that written statement could not be placed within stipulated time for want of documents from the plaintiff-which were made available on 11/11/2016. Written statement, even thereafter was not tendered till 10/04/2019. As such, it can be inferred from the record that there is unexplained delay of about 5 years tendering written statement on record. Even after the suit proceeded without W.S. on 27/11/2017, the fact remains that the reasons which are relied on viz. resignation of partner, anomaly in the Rozanama and the order of no W.S. passed on 18/03/2017 and 27/11/2017 will be of hardly any consequences as order of the court has to be given privilege over notings in the Rozanama. In any case even if period of about 7 months in between 18/03/2017 till 27/11/2017 referred above is given latitude, same will be of hardly any assistance particularly when there is delay of more than 5 years in filing written statement. The retirement of the partner as claimed is also not justified from the material available on record.

8] I hardly see any illegality or material irregularity which warrants interference in extraordinary jurisdiction under Article 227 of Constitution of India. The views expressed by the learned trial

court are based on settled principles of law as are in catena of judgments referred therein.

9] Writ petition as such fails, stands dismissed. No costs.

[NITIN W. SAMBRE, J.]

Order corrected pursuant to speaking to minutes order dated 30/09/2021.