

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10001 OF 2021

SANJAY HIRAMAN MALI AND ANOTHER
VERSUS
SURESH MANIK PATIL AND ANOTHER

Ms.Tanvi Jadhav h/f Mr.S.PShah, Advocate for the petitioners.

(CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 24, 2022

PER COURT :

1. Heard the learned counsel for the petitioners who placed reliance upon the decision of the Apex Court in case of **Desh Raj Vs. Balkishan (Dead) through proposed legal representative Ms.Rohini [(2020) 2 SCC 708]**.

2. The petitioners/plaintiffs, who instituted a suit RCS No.90/2019 for recovery of possession on the possession of title of the suit land. The suit being instituted on 02.11.2019, the summons were served and. the defendant No.1 put his appearance on 20.11.2019. On the short dates being granted from 20.11.2019 to 14.01.2020, the time was sought to file written statement. On 06.02.2020, while rejecting

application filed by defendant No.1, to grant time to file written statement, a "No written statement order" was passed. On 05.04.2021, an application was moved by the defendants vide Exh.54 for setting aside the "No written statement order", which was supported by an affidavit stating that the written statement could not be filed within the period stipulated, since he was ill.

It is this application which has been allowed by the learned Judge, which has given rise to the present petition.

3. Perusal of the impugned order would reveal that the Court has recorded that the suit is pending for hearing on an application below Exh.5 for temporary injunction. The Court also record that there is a delay in filing the written statement, but the application filed by Exh.54 is supported by an affidavit and the reasons stated therein appeared to be justifiable. It being settled position of Law that the written statement can be permitted to be filed beyond the expiry of period of limitation provided sufficient cause has been shown, the learned Judge accepted the said explanation, supported by an affidavit and since the statement therein was not disputed, an application has been allowed subject to costs of Rs.1,200/-.

4. It is no doubt that the timeline set out in the CPC, are to be duly adhered to. However, if the discretion is vested in Courts and in case the discretion is judiciously exercised, it do not warrant any interference at the instance of this Court. The position of Law that delay should not defeat justice and if delay occurring due to the factors beyond the control of the parties, is explained satisfactorily, it would be just and proper for the Court to exercise the discretion for condoning the delay. Here accepting the explanation offered, delay has been condoned, the "no written statement order" has been set aside by compensating the plaintiff by costs of Rs.1,200/-. In my considered opinion, the learned Judge has done justice to both the parties.

The impugned order therefore do not call for any interference and it is upheld and the writ petition is dismissed.

(BHARATI H. DANGRE, J.)