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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13897 OF 2021

Kazi Ahmed Mujtaba Mohammad

PETITIONER

VERSUS

Vijaysing Babusing Pardeshi and Another

RESPONDENTS

.....

Mr. C.R.Deshpande h/f Mr. C.C.Deshpande, Advocate for
petitioner

Mr. Ameya N. Sabnis, Advocate for respondents No.1 and 2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th JULY, 2022

ORDER :

1. This petition, filed under Article 227 of the Constitution of India, impugns the order passed by learned Joint Civil Judge, Senior Division, Shahada below Exhibits-21 and 23 in Regular Civil Suit No. 75 of 2019, thereby rejecting application Exhibit-21 filed by the plaintiff and allowing application Exhibit-23 filed by the defendants.

2. The plaintiff has filed the suit for recovery of possession of the suit premises and mesne profits. In the suit, notice was served on the defendants on 2nd December, 2019. Thereafter the defendants appeared in the suit and filed applications seeking

time to file written statement. The last such application seeking time to file written statement was filed by the defendants on 7th February, 2020. The said application came to be allowed and the Trial Court adjourned the matter to 3rd March, 2020. On that day, the defendants filed written statement on which order "*read and recorded*" is passed by the Trial Court.

3. Application Exhibit-21 is filed by the plaintiff on 17th March, 2020 thereby praying to treat the written statement as redundant and not to rely upon the same in the evidence. On such application having been filed by the plaintiff, the defendants also filed application Exhibit-23 contending that in fact there is no delay in filing the written statement, however, if there is delay of two days in filing written statement, the same is caused due to inadvertence and the same may be condoned in the interest of justice. By the impugned order, the Trial Court has rejected the application Exhibit-21 and allowed application Exhibit-23. Hence, this petition.

4. Heard learned advocate for the petitioner and the learned advocate for the respondents.

5. Learned advocate for the petitioner assailed the impugned order mainly on the ground that without there being any

application for condonation of delay the Trial Court has erred in permitting the defendants to file the written statement. He submits that the written statement was filed on 3rd March, 2020, whereas the application, Exhibit-23 is filed on 7th September, 2021 i.e. belated application filed after almost six months was not maintainable. The Trial Court has erred in allowing the said application in absence of any proper or satisfactory explanation given by the defendants. In support of his submissions, he relied on following judgments -

- i. *‘Kailash V/s Nankhu and Others’ 2005 AIR SC 2441*
- ii. *‘R. N. Jodi V/s Shubhashchandra’ 2007 AIR SC 2571*
- iii. *‘M/s Aditya Hotels (p) Ltd., V/s Bombay Swadesh Store Ltd and Others’*
- iv. *‘Atcom Technologies Limited V/s Y. A. Chunawala and Co and Others’*
Civil Appeal No (S) 4266-4267 of 2018.

6. Per contra, learned advocate for the defendants supported the impugned order. He submits that on 7th February, 2020, by filing application Exhibit-13, time was sought to file written statement. The application came to be allowed and the next date given by the Trial Court was 3rd March, 2020 and on that day, written statement was filed. He submits that serious prejudice will be caused to the defendants, if their written statement is not accepted. By relying on "***Sangram Singh V/s Election Tribunal,***

***Kotah"* AIR 1955 SC 425**, he submits that there is no substance in the petition and the petition may be dismissed.

7. It is not in dispute that application Exhibit-13 was filed by the defendants on 7th February, 2020 and the same was allowed by the trial court and the matter was adjourned to 3rd March, 2020 and on that day, written statement is filed by the defendants. The Trial Court has passed an order "*read and recorded*" on the written statement. It is, therefore, clear that the defendants as well as the Trial Court and even the plaintiff were under the impression that the written statement is filed within the time. It is only when on 17th May, 2020 application Exhibit-21 is filed by the plaintiff, that time, it was realized that there is delay of two days in filing the written statement. The delay of two days in filing the written statement cannot be said to be inordinate and the ground of inadvertence in the peculiar facts of the present case, is acceptable and has rightly been accepted by the Trial Court. The suit is filed for possession and, therefore, valuable rights of the defendants are involved in respect of the immovable property. In the interest of justice reasonable and fair opportunity needs to be given to the defendants to contest the suit filed by the plaintiff on merits. In that view of the matter also, the Trial Court is justified in

allowing the application Exhibit-23 filed by the defendants and condoning the delay of two days caused in filing the written statement. For the reasons stated in the order, the Trial Court is justified in rejecting the application Exhibit-21 filed by the plaintiff.

8. In "**Kailash**" (*supra*), the Apex Court has held that a prayer seeking time beyond 90 days for filing written statement ought to be made in writing and the judicial discretion should be exercised on well settled parameters while condoning the delay. The extension of time shall be only by way of exception and for the reasons to be recorded in writing. The Court may impose costs for dual purpose : (I) to deter the defendant from seeking any extension of time just for asking: and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

In the case in hand, admitted position on record is that delay of two days caused due to inadvertence and the same is condoned by the Trial Court by imposing costs of Rs.500.

9. In "**R. N. Jadi**" (*sura*), the Apex Court has held that '*the procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the*

recipient of justice is not to be followed. The procedural law is not to be a tyrant but a servant not an obstruction but an aid to justice'

Since, in the present case, the Trial Court has condoned the delay of two days in filing the written statement, which was caused due to inadvertence, order passed by the Trial Court is in consonance with the ratio laid down in this ruling.

10. In "***Atcom Technologies Limited***" (*supra*), the Apex Court was considering the case of condonation of delay of five years by the High Court in filing written statement. It was held that the High Court, while condoning the delay, disregarded the provisions of Order VIII, Rule 1 of the Civil Procedure Code and the spirit behind it. The reason given by the High Court while condoning the delay i.e. '*by balancing the rights and equities*' is far fetched and, in the process, abnormal delay in filing the written statement is condoned without addressing relevant factors, viz., whether the respondents had furnished proper and satisfactory explanation for such a delay. It was, thus, held that the approach of the High Court is clearly erroneous in law and cannot be countenanced.

There cannot be said to be abnormal delay. As in the

present case, there was only two days' delay, that too due to inadvertence. Therefore, this citation also would not help the petitioners.

11. In "**Sangram Singh**" (*supra*), The Apex Court held thus,

"16. Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

17. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.

18. The existence of such a principle has been doubted, and in any event was condemned as unworkable and impractical by O'Sullivan, J. in Hariram v. Pribhdas. He regarded it as an indeterminate term "liable to cause misconception" and his views were shared by Wanchoo, C. J. and Bapna, J. in Rajasthan: Sewa Ram V. Misrimal. But that a law of natural justice exists in the sense that a party must be heard in a Court of law, or at any rate be afforded an opportunity to appear and defend himself, unless there is express provision to the contrary, is, we think, beyond dispute. See the observations of the Privy Council in Balakrishna Udayar v. Vasudeva Ayyar, and especially in T. M. Barret v. African Products Ltd.(1) where Lord Buckmaster said

"No forms or procedure should ever be permitted to exclude the

presentation of a litigant's defence".

Also Hari Vishnu's case which we have just quoted.

“ In our opinion, Wallace, J. was right in VenkataSubbiah v. Lakshminarassimham in holding that

"One cardinal principle to be observed in trials by a Court obviously is that a party has a right to appear and plead his cause on all occasions when that cause comes on for hearing",

and that -

"It follows that a party should not be deprived of that right and in fact the Court has no option to refuse that right, unless the Code of Civil Procedure deprives him of it".

The aforesaid observations support the case of the defendants.

12. For the aforestated reasons, there is no merit in the writ petition. Writ petition is, therefore, dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE