

Pallavi

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

**WRIT PETITION NO.6056 OF 2019
WITH
WRIT PETITION NO.8604 OF 2019**

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Mrs. Shobha Manohar Vanarse and Ors. ... Petitioners
Versus
Mr. Chetan Madanlal Kothari and Ors. ... Respondents

Mr. Kantilal H. Kanojia for the Petitioners in both Petitions.
Mr. Kunal Bhanage a/w Mr. Yash Joglekar h/f. Respondent No.1 in
both Petitions.

**CORAM: MADHAV J. JAMDAR, J.
DATE : 2nd DECEMBER, 2022**

P.C.:

1. By order dated 8th February 2013 passed in R.A.E. Suit No.892/1424 of 2012 the suit was directed to be proceeded ex-parte. The Petitioners filed Exh.17 application seeking setting aside said ex-parte order and also filed Exh.18 application seeking that delay in filing written statement be condoned and the same be taken on record. By the impugned order dated 28th July 2017 both the applications were rejected. The said orders were challenged by filing Revision Application No.422 of 2018 and Revision Application No.423 of 2018 before the Division Bench of Small Causes Court at Mumbai. The said Revisions were dismissed by the Division Bench of Small Causes Court, Mumbai by order dated 10th December 2018.

Thereafter, immediately the present Petitions have been filed on 30th January 2019.

2. After arguing both the matters for sometime, the parties arrived at minutes of the order. As the trial is not proceeding further due to pendency of these writ petitions, Respondent No.1 agreed for minutes of terms. Both the learned Advocates have signed the said minutes. The said minutes are taken on record and marked 'X' for identification. The said minutes of terms reads as under:-

“Minutes of Terms

- 1) Both the aforesaid Petitions were heard finally by this Hon'ble Court and allowed the same by imposing exemplary cost of Rs.30,000/- upon the Petitioners.
- 2) It is agreed and confirmed by the Petitioners/Org. Defendant No.1 to 4 and Respondent No.1/Org. Plaintiff to deposit the said exemplary costs of Rs.30,000/- in the manner as mentioned hereinafter.
 - a) A sum of Rs.10,000/- to be donated/deposited with the Library of Small Causes Court, Mumbai.
 - b) A sum of Rs.5000/- to be donated to the Charity of Orphanage viz. Shanti Avedna Sadan, situated at 216, Mount Mary Road, Bandra (West), Mumbai – 400 050.
 - c) A sum of Rs.15,000/- paid to the Ld. Advocate Shri Rupesh Karia on behalf of Respondent No.1/Org. Plaintiff and obtained an acknowledgment. Copies of the cheques/receipts are annexed herewith.
- 3) In view aforesaid both the Writ Petitions No.6056 of 2019 & W.P. No.8604 of 2019 are disposed off by this

Hon'ble Court and the orders dated 08.02.2013, in Exhibit-17 suit to proceed ex-parte & 28.07.2017, in Exhibit-18, refused to condone the delay to take on record written statement of the Defendant No.1 to 4/Petitioners passed by the Ld. Trial Court Room No.12 is hereby set aside. Further, the orders in Revisions No.422 & 423 of 2018 dated 10.12.2018 are also hereby set aside and directed the Petitioners/Org. Defendant No.1 to 4 to file their written statement in the Ld. Trial Court in pending suit within 4 weeks.

- 4) In view thereof, this minutes of terms has been signed by the Ld. Advocates of the parties.”

3. Learned counsel Mr. Kanojia appearing for the Petitioners and Mr. Kumar Bhanage, the learned counsel appearing for the Respondent No.1 states that reasons need not be given for setting aside the impugned orders. In view of the minutes of terms submitted by the Petitioners i.e. defendant Nos.1 to 4 and Respondent No.1 i.e. original plaintiff, the following order is passed :-

ORDER

- (i) Order dated 10th December 2018 passed by the Division Bench of the Small Causes Court, Mumbai in Revision Application No.423 of 2018 and Revision Application No.422 of 2018 as well as order dated 28th July 2017 passed by the learned Judge, Small Causes Court,

Mumbai below Exhs.17 and 18 in R.A.E. Suit No.892/1424 of 2012 are quashed and set aside;

(ii) The said applications bearing Exhs.17 and 18 filed in R.A.E. Suit No.892/1424 of 2012 are allowed;

(iii) The Petitioners i.e. defendant Nos.1 to 4 in R.A.E. Suit No.892/1424 of 2012 to file written statement on or before 3rd January 2023;

(iv) The concerned learned Judge, Small Causes Court, Mumbai is requested to dispose of the said R.A.E. Suit No.892/1424 of 2012 expeditiously;

(v) This order is passed subject to the Petitioners paying cost of Rs.30,000/- in the following manner:-

(a) A sum of Rs.10,000/- to be donated to Library of Small Causes Court, Mumbai;

(b) A sum of Rs.5,000/- to be donated to the Shanti Avedna Sadan, Mumbai;

(c) A sum of Rs.15,000/- to be paid to Respondent No.1 – original plaintiff.

4. Both the Writ Petitions are disposed of in above terms.

(MADHAV J. JAMDAR, J.)