

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5119 OF 2021**

M/s.Shree Kahan Nagar Co-op Soc.Ltd

and anr

.. Petitioners

Versus

Shailaja Umakant Achrekar & ors

.. Respondents

WITH

WRIT PETITION NO. 5271 OF 2021

M/s.Shree Kahan Nagar Co-op Soc.Ltd

and anr

.. Petitioners

Versus

Mangalprasad Vijay Hublal Pasi & Anr

.. Respondents

WITH

WRIT PETITION NO. 5360 OF 2021

M/s.Shree Kahan Nagar Co-op Soc.Ltd

and anr

.. Petitioners

Versus

Dayaram Salatu Jaiswar & Ors

.. Respondents

WITH

WRIT PETITION NO. 5361 OF 2021

M/s.Shree Kahan Nagar Co-op Soc.Ltd

and anr

.. Petitioners

Versus

Chandraprakash Ramnarayan Sharma

and ors

.. Respondents

WITH

WRIT PETITION NO. 5269 OF 2021

M/s.Shree Kahan Nagar Co-op Soc.Ltd

and anr

.. Petitioners

Versus

Mohanlal B Mali and ors

.. Respondents

WITH
WRIT PETITION NO. 5122 OF 2021

M/s.Shree Kahan Nagar Co-op Soc.Ltd
and anr .. Petitioners
Versus
Radheshyam Rasmsaran Singh & Ors .. Respondents

WITH
WRIT PETITION NO. 5120 OF 2021

M/s.Shree Kahan Nagar Co-op Soc.Ltd
and anr .. Petitioners
Versus
Sumandevi Mohanlal Mali .. Respondent

WITH
WRIT PETITION NO. 5358 OF 2021

M/s.Shree Kahan Nagar Co-op Soc.Ltd
and anr .. Petitioners
Versus
Mahadeo Balu Kothare & ors .. Respondents

WITH
WRIT PETITION NO. 5121 OF 2021

M/s.Shree Kahan Nagar Co-op Soc.Ltd
and anr .. Petitioners
Versus
Sanjay Ramdulare Gupta .. Respondent

WITH
WRIT PETITION NO. 5272 OF 2021

M/s.Shree Kahan Nagar Co-op Soc.Ltd
and anr .. Petitioners
Versus
Mahadev Dharamsi Patel .. Respondent

...

Mr.Prafulla Shah i/b K.P. Shah for the petitioners in all Petitions.
Ms.Jacqueline D'Souza for respondent no.1.
Ms.Vrushal Gupta for respondent no.2.

CORAM: RAVINDRA V. GHUGE, J.

DATED : 20th JANUARY, 2022

P.C:-

1 In all these Writ Petitions, the grievance put forth by the petitioner - original defendant no.3 in the respective suits, is that the revisional Court ought not to have allowed the Revision Applications, thereby permitting the original defaulting defendants, to file their written statements. There is no dispute that the original plaintiff is not before this Court in raising a challenge to the judgment and orders impugned in these petitions, vide which the defaulting defendants have been permitted to file their written statements in his suits.

2 I have considered the strenuous submissions of the learned counsel for the respective sides.

3 It is not in dispute that the defaulting defendants have committed a delay of around 350 to 383 days, specific delay being mentioned in each of the impugned orders. The Revisional Court directed the defaulting defendants to pay Rs.5,000/- costs to the original plaintiff and on this condition, the learned Trial

Court was directed to take the written statements, already filed, on record.

4 The petitioner before this Court is defendant no.3 in all the pending suits. After canvassing all the grounds set out in the petitions, in the alternative, the petitioners desire that the defaulting defendants should pay costs even to the petitioners and they desire to donate the said amount to the Kirtikar Law Library, Appellate Side, Bombay High Court at Mumbai.

5 I have perused the impugned judgment and I am in agreement with the conclusions drawn by the Revisional court in paragraph nos.15 to 23 which read as under :-

“15 One of the reason for rejecting application for condonation of delay and setting aside order of No written statement, is that there is delay of 383 days. In this connection, Ld. Advocate for the applicants submitted that Ld. Trial Court has not acted fairly while dealing with the applications. It was pointed out that even respondent No.2 had not file written statement within a stipulated time. However he was allowed to file written statement on payment of costs, but the present applicants were deprived by the trial Courts to grant some relief. It may mentioned that under Order 8 Rule 1 of Code of Civil Procedure, Court is empowered to accept in appropriate case a statement beyond period of 90 days of service of summons on defendant. The extension of time for filing written statement beyond statutory period fixed in Order VIII Rule 1 does not take away power of the Court to accept written statement filed beyond time if sufficient cause is shown.

16 In numerous Judgments, Hon'ble Apex Court held that word "shall" contemplated under Order VIII Rule 1 by itself is not conclusive to determine that provision is mandatory.

17 In **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (2005 SCFBRC 429)**, it has been held that the rule in question has to be advance the cause of justice and not to defeat it. The litigant should get fair trial in accordance with the accepted principle of natural justice.

18 In **Mahadeo Ramchandra Chikate Vs. Baliram Vithu Khaire, 2018 (4) Bom.C.R. page 329**, relied upon by applicants, the Hon'ble High Court had given opportunity to the defendant to file written statement and contest the matter in a disposed of suit by remanding said matter back to the trial Court for hearing on merits. It was also held that interest of justice always require that matter should be decided on merit.

19 In **Machipeddi Remaswamy V/s. P. Buchi Reddy AIR 2003 AP, 446** Honble High Court held that Pronouncement of Judgment without taking on record written statement is not proper.

20. In **Bashir Ahmed V/s. Khalil Ahmed, AIR 2013 Meghalaya page 38**, Honble High Court enunciated that even if no justifiable explanation is given, written statement can be taken on record by giving necessary cost/compensation to the plaintiff to meet the ends of justice.

21. Then in **Bindeshwar Prasad Nayak & Ors. V/s. Bitam Rabidas AIR 2006 Jharkhand 95**, it was held that even though no good reason is shown to condone the delay, denial of such valuable legal right may cause irreparable loss, injury and injustice to defendant.

22. In **Kailash V/s. Nanhu & ors. (2005) SCFBRC page 248** Honble Apex Court held that the object is to expedite the hearing and not to scuttle the same. The process of justice may be speed up and hurried but the fairness which is the basic element of justice cannot be permitted to be buried. In our considered opinion the aforesaid authorities would come to the assistance of the appellants.

23. Audi Alteram Partem which is one of the principle of natural justice should be drawn in the line in the interest of justice. In the present case, we find one another reason to accept the plea of applicants. The reason is that respondent No. 1 being a tenant filed inter pleader suit against present applicants and respondent No. 2 stating that he is ready to pay rent to real owner and landlord of the suit property. Here, applicants and respondent No. 2 both are claiming that they are real landlord of the suit property. This being the position, for the fairness of the case, the written statement of the applicant needs to be on record to meet ends of justice. It is to be noted that written statement is vital tool in the hand of opposite party to deny the case of the plaintiff. If applicants are not allowed to file written statement on record, they will be not in position to defend themselves. A party cannot be not suited on technicality & must be given an opportunity to defend its case. Therefore though there is delay of 383 days in filing written statement, keeping in mind the aforesaid legal principle, we find that impugned order dated 13/6/2018 needs to be set aside by imposing reasonable cost. Hence, we answer point No.1 in the affirmative.

6 Considering the delay caused can neither be said to be deliberate nor inordinate, it would be in the interest of justice and to enable a proper adjudication of the Suits, that the defaulting defendants should be permitted to file their written statements.

Under the impugned orders of the Revisional court, costs of Rs.5,000/- have been paid by each of the defaulting defendants to the plaintiff and the written statements have been taken on record. Nevertheless, while considering the quantum of costs, the financial capacity of the defaulting litigant has to be considered and the costs should be commensurate to the delay caused. If the delay is in between 350 days to 383 days, and if the defaulting defendant is a builder by profession, who deals in lands and immovable properties, I am of the view that the contention of the petitioners before this Court that there should be addition of costs, is sustainable.

7 In view of the above, all these Petitions are disposed off. A further direction, to those issued by the Revisional Court which have been sustained in this order, shall read as under :-

(a) The defaulting defendants shall further pay costs of Rs.5,000/-, each to the petitioner, who is defendant no.3, in all pending suits, by depositing the said amount in this Court, on or before 15/2/2022. Considering the request of the petitioner, the Registry of this Court shall donate the said amount to the Kirtikar Law Library, the Appellate Side of the Bombay High Court at Mumbai.

RAVINDRA V. GHUGE, J