

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8285 OF 2022

Vikas Vitthal Bele		Petitioner
Versus		
Kailas Vitthal Bele		Respondent

Mr. Vinayak B. Gadekar for the Petitioner.

CORAM : VALMIKI SA MENEZES, J.

DATE : 18th NOVEMBER, 2022

P.C. :

1. Rule. Rule made returnable forthwith by consent of parties.
2. This petition under Article 227 of the Constitution of India takes an exception to order dated 25.04.2022 passed by the learned Single Judge (Senior Division), Thane in Special Civil Suit No.402 of 2022, whereby the Civil Judge was pleased to enlarge the time permitted under the provisions of Order VIII Rule 1 of Code of Civil Procedure for Defendant No.1 to file written statement in the suit.
3. Heard learned counsel for the petitioner. Perused the record.
4. The petitioner is the original plaintiff in a suit filed for declaration of the plaintiff's title to the suit property, which he claims by way of adverse possession, for a further declaration that the title of Defendant No.1 as owner of the suit property stood extinguished and for consequential reliefs of permanent injunction against Defendant No.1. Pending disposal of the

suit, the plaintiff had also sought interim relief in the nature of a temporary injunction against Defendant No.1 restraining him from interfering with the possession of plaintiff to the suit property.

5. From the Roznama entries in the Suit, it appears that Defendant No.1 was served with summons of the suit on 03.09.2021 and put an appearance on 04.09.2021. Defendant No.1 sought time to file written statement on 28.09.2021 prior to the expiration of the 30 days specified under Order VIII Rule 1 of CPC and from time to time, the matter was adjourned on 27.10.2021, 10.12.2021, 03.01.2022, 28.01.2022, 08.02.2022 and 10.03.2022. On 13.04.2022, Defendant No.1 filed two applications, one for condonation of delay in filing written statement and the second for setting aside the “No WS order” and to take on record the written statement of Defendant No.1 which was annexed to the application. The written statement was also verified on the same day i.e. 13.04.2022.

6. Prior to this, Defendant No.1 also moved an application on 03.01.2022 for adjournment of the matter to file his written statement, which was granted on the ground that Defendant No.1 was out of station and was not able to appear in the Court or give proper instructions to his advocate. The applicant has stated that when the defendant approached his advocate to give instructions, his advocate was out of the country in Dubai and two of his family members were found Covid Positive, as a result of which the said advocate was unable to return India and was held up in Dubai. In these circumstances, an adjournment was sought to enlarge time for filing the written statement.

7. While passing the impugned orders dated 25.04.2022, it is clear from both the orders on Exh.22 and 23 of the file of Trial Court, that the Trial Court has considered the reasons set out in the application of Defendant No.1 and on considering this record, has exercised its discretion to extend the time set out in the order dated 08.02.2022 to enable Defendant No.1 to file written statement which was infact taken on record on 13.04.2022 itself.

8. Learned counsel for the petitioner vehemently argued that the time limit set out in Order VIII Rule 1 of the CPC cannot be enlarged without assigning proper reason for the same. He further argued that there was no case made out by Defendant No.1 for the Courts below to consider as valid grounds for enlargement of time as in fact, there was no settlement talks between the parties as stated in the application for enlargement of time.

9. Be that as it may, I find that the Trial Court appears to have considered the reasons given in the application as proper reasons for accepting the written statement on record. However, from the record, it transpired that in the month of January and February, Defendant No.1 appears to have been prevented from filing his written statement for the reasons that his advocate was held up in abroad and was unable to travel to India due to the Covid Pandemic.

10. I find that the discretion exercised by the Trial Court in granting the applications at Exh.22 and 23 of Defendant No.1 and enlarging time to file Written Statement and condoning the delay in filing the same has not been exercised improperly or in any manner contrary to the provisions of Order VIII Rule 1 of CPC.

11. For the reasons stated above, I do not find this is a fit case for interference in supervisory jurisdiction under Article 227 of the Constitution of India. The petition is therefore, dismissed at the threshold.

12. Rule is discharged. Writ Petition is disposed of accordingly.

[VALMIKI SA MENEZES, J.]