

VRJ

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

WRIT PETITION NO.1310 OF 2017

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Thakarsi Nanji Keniya & Ors.

... Petitioners

V/s.

Dhiraj Panchabhai Savaliaya Alias Patel

... Respondent

Mr. Pratik Rahade i/by Mr. Sham V. Walve for the
petitioner.

Mr. Himanshu Nagarkar with Ms. Kashish Bijlani for
the respondents.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 8, 2023

P.C.:

1. The defendants in a suit for recovery of compensation under section 6 of the Specific Relief Act, 1963, is challenging order of the Trial Court refusing to treat reply to temporary injunction application as written statement.

2. From the record, it is apparent that the suit summons were served on the defendants on 4th February 2016. More than six adjournments were granted to the petitioners for filing written statement. Ultimately, on 2nd July 2016, the petitioners filed an application for condonation of delay in filing written statement. However, in paragraph 4 of such application defendants stated that they want to adopt say filed to temporary injunction application as

written statement.

3. The Trial Court, by the impugned order, rejected such application and also rejected review application.

4. Learned advocate for the petitioners relying on judgment of this Court in the case of **Kuldeep Umraosingh Ostwal and Another vs. Chandrakant N. Patel and Others** reported in 2010(2) Mh.L.J. 689, submitted that this Court had proved practice of filing pursis to treat reply to temporary injunction application as written statement. This Court held that in such case, there is no requirement of the defendant making out a case of existence of exceptional or extraordinary circumstances.

5. Learned advocate for the respondent further pointed out that considering the nature of suit and considering the petitioners' conduct to delay the decree for possession, the petitioners are not entitled to discretionary relief.

6. On perusal of application dated 2nd July 2016, it appears that the petitioners prayed for treating reply to temporary injunction application as written statement. Therefore, the issue involved is squarely covered by judgment in the case of **Kuldeep Umraosingh Ostwal and Another** (supra).

7. However, as submitted on behalf of the respondent that the suit is at advanced stage. The matter is fixed for arguments. Therefore, for the delay caused in filing such application and failure to move the writ petition earlier, the respondent needs to be compensated in terms of costs. The resultant delay in allowing petitioners to adopt written statement can also be compensated by

directing Trial Court to decide the suit within the time bound program.

8. Hence, following order:

- a) The impugned orders are quashed and set aside.
- b) The reply filed by the petitioners be treated as written statement.
- c) The petitioners would be entitled to cross-examine the plaintiff and his witnesses within one month from today.
- d) The hearing of the suit shall be completed within one month from today and the suit shall be decided within two months from today.
- e) The petitioners are directed to pay amount of Rs.15,000/- as costs to the respondent.
- f) Payment of costs shall be condition precedent before the petitioners are allowed to participate in hearing of the suit.

9. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)