

Nikita

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

WRIT PETITION NO.900 OF 2023

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Shyam Kanyalal Mundra

... Petitioner

V/s.

Imran Mushtaq Ahemad and Ors.

... Respondents

Mr. Ashish Gatagat i/b Hira Gummala for the
Petitioner.

Ms. Rachana Mammani i/b Mr. Prashant P. Kulkarni for
Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 31, 2023

P.C.:

- 1.** The petitioner/original defendant No.5 is challenging order dated 23rd June 2022 passed by City Civil Court rejecting notice of motion to set aside no written statement order and to permit defendant No.5 to file written statement.
- 2.** The respondent No.1 initially filed suit No.979 of 2008 in this Court challenging auction held in the year 2002.
- 3.** The defendant No.5 appeared through advocate. Due to increase of pecuniary jurisdiction of City Civil Court, the suit was transferred to City Civil Court in the year 2012. The petitioner appeared in the said suit through advocate on 6th July 2015.
- 4.** On 17th November 2021, defendant No.5 filed a notice of

motion seeking permission to file written statement. The reason stated in the notice of motion was that the advocate never told defendant No.5 to file written statement and defendant No.5 was under the impression that the advocate was appearing in the matter must have file written statement. It is only after he changed his advocate, he realized that written statement was not filed. Immediately, thereafter, he applied for certified copies of the proceedings on 12th November 2021 and filed the notice of motion seeking permission to file written statement.

5. The City Civil Court refused to condone the delay of 6 years in filing the written statement.

6. The learned advocate for the petitioner submitted that the prejudice caused to the plaintiff can be compensated in terms of money by imposing appropriate costs. According to him, the reason stated in the notice of motion is “exceptional reason”, and therefore, the defendant No.5 be permitted to file written statement.

7. Per contra, learned advocate for the plaintiff objected for granting relief in favour of petitioner as according to her, the reason disclosed is not followed within the expression exceptional reason.

8. The parameters for exercise of power under Order 8 Rule 1 of CPC, have been delineated by the Apex Court in the case of **Kailash Vs. Nanhku** reported in **(2005) 4 SCC 480**.

9. The Apex Court was considering an election petition filed before the original site of this Court. The Supreme Court was

considering a question as to whether the provisions of Order 8 Rule 1 of CPC which requires defendant to file his written statement within 60 days, from initial 30 days from the date of service of summons is mandatory or directory to maintain balance between the interpretation as mandatory or directory the Apex Court observed that the defendant seeking permission to file written statement requires to make out an 'exceptional reason' for exercise of discretionary power under Order 8 Rule 1 of CPC. Therefore, unless the defendant makes out a 'exceptional reason' as abuse to sufficient cause as contemplated under Section 5 of Limitation Act, 1963, the Court exercising power under Order 8 Rule 1 of CPC cannot be said to have committed error of jurisdiction by refusing to permit defendant to file written statement.

10. Reason mentioned in the affidavit-in-support states that, the defendant was not aware of need to file written statement and he was under impression that the written statement was already filed.

11. This reason mentioned in the affidavit-in-support of notice of motion does not qualify to be an 'exceptional reason' as contemplated by the Apex Court in the case of **Kailash** (supra). The impugned order does not suffer from legal infirmity.

12. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)