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

WRIT PETITION NO.12081 OF 2023

Amrish Daftary ... Petitioner

V/s.

Madanlal Mehra & Ors. ... Respondents

WITH

INTERIM APPLICATION NO.15796 OF 2023

IN

WRIT PETITION NO.12081 OF 2023

Amrish Daftary ... Applicant

V/s.

Madanlal Mehra & Ors. ... Respondents

Mr. D. V. Sawant with Mr. Priyank Kulkarni with Mr. Parag Sawant i/by P. S. Chambers for the applicant/petitioner.

Mr. Jai Chabbaria with Ms. Jaisha Sabavala i/by Argno Partners for respondent Nos.4(a), 4(b), 5 & 8.

Mr. R. A. Shah with Mr. Mohammed Lokhandwala i/by Mansukhlal Hiralal & Co. for the respondent Nos.11 and 12 in IA.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 17, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging an order dated 4th April 2017 passed by the Trial Court refusing to take on record the written statement filed by the petitioner along with Notice of Motion

No.266 of 2017.

2. The respondent, Nos.1 to 10, filed Suit No.3502 of 1987 seeking a relief of declaration and permanent injunction. The said suit remained pending in this Court from 1987 to 2012. On enhancement of pecuniary jurisdiction of the City Civil Court, on 7th September 2012, the suit stood transferred to the City Civil Court. On 4th December 2014, the City Civil Court passed an ex parte order against the defendants.

3. After three years, in January 2017, the petitioner filed Notice of Motion No.266 of 2017 seeking condonation of delay in filing a written statement. The Trial Court dismissed the notice of motion by order dated 4th April 2017.

4. After six years, the petitioner, on 26th July 2023, initially filed an appeal from the order. However, on 4th September 2023, the appeal from the order was withdrawn with the liberty to file a writ petition. In pursuance of said liberty, the petitioner filed a present writ petition on 8th September 2023.

5. In paragraph No.39, the petitioner has explained the laches of six years in filing the writ petition. Broadly, the reasons in paragraph 39 are as under:

(i) The Petitioner's father was hospitalized, advised for an operation, and bedridden for a considerably long time.

(ii) The Petitioner's mother suffered from Osteopenia and Pulmonary disorder from December 2016.

(iii) The Petitioner's father developed severe complications due to old age.

(iv) As per the order of the Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020, the petitioner is entitled to the benefit period from 15th March 2020 to 28th February 2022.

(v) The petitioner is also not in good health.

6. Learned advocate for the petitioner invited my attention to the various orders passed by the Court and took me through the relevant record of the Trial Court. According to him, service of writ of summons as contemplated by Rules 72, 74 and 76 of the Bombay High Court (Original Side) Rules, 1980, was not served on him. According to him, the appearance of the advocate in the suit from 1989 was only to defend an interim relief application. Until a writ of summons was served on him, he had no occasion to file a written statement. According to him, fresh notice was necessary after the transfer of suit, and, therefore, he could not file a written statement.

7. Per contra, learned advocate for the respondents submitted that the petitioner contested the interim relief application in the suit through advocates. The fact of the pendency of the suit was within the petitioner's knowledge. It is not the petitioner's case that he was not aware of the pendency of the suit. Therefore, a writ of summons does not need to be served. According to him, even after passing the impugned order, the petitioner was aware of the order and the legal remedies. According to the respondents, filing the petition after six years gives rise to the plea of waiver or

acquiescence.

8. I have considered the submissions made on behalf of both sides. Based on the material on record, the following factual scenario emerges:

(i) On 14th December 2014, the Trial Court directed the suit to proceed ex parte against the petitioner.

(ii) In 2017, a notice of motion to recall the ex parte order was filed.

(iii) On 4th April 2017, the impugned order dismissing the notice of motion to recall the order of ex parte and seeking permission to file a written statement was rejected.

(iv) On 26th July 2021, after almost six years, the petitioner filed an appeal from the order, which was withdrawn on 4th September 2023 and filed a present writ petition on 8th September 2023.

Therefore, the laches in filing the present writ petition exceeds six years.

9. Since the Civil Court passed the order, power under Article 227 of the Constitution of India is available and is invoked. The writ of certiorari is prayed. The writ of certiorari is extraordinary constitutional jurisdiction. Self-imposed restrictions regulate power. Self-imposed restrictions are alternative remedies, laches, conduct, etc.

10. Before introducing an amendment in the Civil Procedure Code, the interlocutory orders passed by the Civil Courts used to be challenged by filing revisions under section 115 of the Civil

Procedure Code, 1908 (hereafter, "the CPC", for short). However, by introducing the proviso of section 115 of the CPC, the remedy of revision is taken away. Proviso to section 115 of the CPC restricts its applicability to those proceedings where allowing revision would result in terminating the proceedings.

11. The period of limitation prescribed for availing remedy of revision is 90 days. Therefore, exercising power in the context of delay/laches while filing writ petitions under Article 227 of the Constitution of India is guided by the period prescribed under section 115 of the CPC. There cannot be strait jacket formula as to facts and circumstances which would preclude the Court from entertaining petitions under Article 227 of the Constitution of India. However, unexplained laches/unreasonable delay would certainly be a relevant factor that the Court, while exercising power under Article 227 of the Constitution of India, shall consider. It is true that this Court, under Article 227 of the Constitution of India, may exercise power in relation to orders which lack inherent jurisdiction or are void. While exercising extraordinary constitutional jurisdiction under Article 227 of the Constitution of India, the conduct of a person approaching the Court is also relevant. This Court can refuse to consider on merits a case of a person who has approached this Court with unclean hands or his conduct dis-entitles him from claiming reliefs. In appropriate cases, the locus of the petitioner can also be relaxed. However, consideration of delay/laches remains a major factor for exercising power under Article 227 of the Constitution of India. There is a reasonable amount of judgment on this point. However,

it would be helpful to refer to the relatively recent judgment of the Apex Court in the case of **Bithika Muzumdar vs. Sagar Pal** reported in (2017) 2 SCC 797. The Apex Court, in paragraphs 4 and 5 of the said judgment, held that though there is no limitation prescribed for filing a petition under Article 227 of the Constitution of India, the petition has to be filed without unreasonable delay. If there is a delay, it has to be duly and satisfactorily explained. In the absence of any limitation period, if the petition is filed with some delay and satisfactory explanation, the petition should be entertained on merits. However, in the absence of sufficient explanation of the delay in filing the petition, the Court would be within its power to refuse to exercise extraordinary constitutional jurisdiction. In the facts of the case, it appears that the suit was filed in 1987 and is still pending.

12. Considering unexplained laches, I am not considering whether service of the writ of summons as per provisions of the Bombay High Court (Original Side) Rules, 1980, is mandatory or not. However, in my opinion, for entertaining the petition, the petitioner needs to explain a delay of six years in filing the present writ petition. The petitioner has pleaded explanation in paragraph No.39 of the petition. The reasons in substance are that the petitioner's parents suffered from various illnesses for the benefit of the period as directed in Suo Motu Writ Petition (C) No.3 of 2020.

13. On perusal of the material produced by the petitioner in support of contentions in paragraph No.39, though parents were indeed suffering from illness, the cause shown in paragraph No.39

of the petition is not such which precludes the petitioner from approaching this Court earlier. As explained earlier, the reasonable period in filing a petition under Article 227 of the Constitution of India has to be interpreted in light of the limitation prescribed under section 115 of the CPC. However, a period of 90 days cannot be the inflexible rule, and this Court, while exercising its constitutional jurisdiction, can always entertain the petition at any time subject to a satisfactory explanation of laches.

14. The impugned order was passed on 4th April 2017. The petition was filed on 8th September 2023. illness of the parents, as stated in paragraph No.39, in my opinion, does not constitute a satisfactory explanation for laches in approaching this Court under Article 227 of the Constitution of India. The suit is of the year 1987. The order of ex parte was passed in 2014.

15. In so far as the reason for the benefit of the order of the Supreme Court in *Suo Motu Writ Petition (C) No.3 of 2020* is concerned, the petitioner has filed a present writ petition on 8th September 2023. Therefore, said order will not apply to the petition as clause 5.3 of the order restricts benefits for a period of 90 days from 1st March 2022.

16. Learned advocate for the petitioner placed reliance on the following judgments:

(i) **Mr. Sunil Gupta vs. Asset Reconstruction Company (India) Ltd & Ors.** in Civil Writ Petition No.4885 of 2022 (High Court of Bombay) decided on 12th September 2022.

(ii) **Sudhir Ranjan Patra (Dead) Thr. Lrs. And Another vs. Himansu Sekhar Srichandan and Others** reported in 2022 SCC OnLine SC 629.

(iii) **Kailash vs. Nanhku and Others** reported in (2005) 4 SCC 480.

(iv) **Rani Kusum (Smt) vs. Kanchan (Smt) and others**, reported in (2005) 6 SCC 705.

(vi) **Methodist Episcopal Church, Nagpur and Others vs. Methodist Church in India, Mumbai and Others.** Reported in 2009(4) Mh.L.J. 589.

(vii) **Raj Process Equipments and Systems Pvt. Ltd. & Ors. vs. Honest Derivatives Pvt. Ltd.** in Civil Appeal No.8089 of 2022 decided on 3rd November 2022.

(viii) **Shriram Transport Finance Co. Ltd. & Ors. vs. The State of Maharashtra & Anr.** in Civil Writ Petition No.6989 of 2008 decided on 27th January 2023.

17. On consideration of aforesaid judgments, the preposition of law laid down in these judgments cannot be disputed. However, all the judgments are on the point of guiding the exercise of discretion while exercising power under Order 8 Rule 1 of the CPC. Since the petitioner failed to explain satisfactorily laches in filing the petition, it is unnecessary to consider the exercise of power under Order 8 Rule 1 by the Trial Court. Hence, the judgments are inapplicable.

18. On overall consideration of peculiar facts, in my opinion, the

cause shown by the petitioner cannot be accepted as sufficient cause for entertaining the petition.

19. On overall consideration, I do not find explanation to be satisfactory. Hence, the following order:

20. The writ petition is dismissed. No costs.

21. In view of disposal of the writ petition, interim application stands disposed of as infructuous.

(AMIT BORKAR, J.)