

TAUSEEF
LAIQUEE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12141 OF 2019

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Date: 2023.03.29
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Gelesh Nagashi Gada

...Petitioner

Versus

M/S. Machkarniwate Silver Cottage Pvt. Ltd.

Land Developers,

Through Directors & Ors.

...Respondents

Mr. Bhushan C. Joshi for Petitioner.

Mr. Benimadhav Goswami for Respondents.

Coram : SHARMILA U. DESHMUKH, J.

Date : March 23, 2023.

P. C. :

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. By this writ petition, the challenge is to the order dated 12th July 2019, passed by the trial court allowing the application preferred by the respondents and permitting them to file their written statement after delay of 3 years 2 months and 22 days.

3. Learned counsel appearing for the petitioner has taken this court through the list of dates and events, which is

enumerated in their reply to the respondents' application seeking to set aside "no written statement" order, copy of which is annexed at page 59. He would submit that there is no cogent reason advanced by the respondents for setting aside the order of "no written statement". He submits that the application for setting aside the "no written statement" order came to be filed after the evidence of the petitioner/plaintiff was closed.

4. Per contra, learned counsel appearing for the respondents submits that due to criminal prosecution, the respondent nos.2 and 3 were absconding. He further submits that subsequently, respondents *inter-se* were embroiled in a property dispute and as such, the written statement could not be filed. He would further submit that by the impugned order, the trial court has permitted the respondents to file their written statement after imposing costs and there is no warrant to interfere with the said order paragraph. In the present case, the suit was filed on 16th February 2015 and on 28th July 2015, an appearance was caused on behalf of the respondents. The respondent no.1 is a Private Limited Company of which the respondent nos.2, 3 and 4 are the Directors. Perused the application filed by the respondents for

setting aside the order of “no written statement” passed on 28th October 2015, which is annexed at page 57 of the petition. The reason that has been advanced by the respondents is that the respondents were arrested in the criminal case which was filed by the petitioner and after seeking bail, the Respondents went to their native place as they were unable to face the society. It is further stated that the respondent no.4 is an elderly person aged about 80 years and has to depend on others on his day-to-day activities. The trial court has accepted the reasons given and has set aside the order of no W.S.

5. In my opinion, reasons which are given by the respondents are not cogent enough to condone the delay of 3 years 2 months and 22 days for preferring the present Application. It is not in dispute that the respondents had engaged an advocate to represent them before the trial court. The application which has been filed for setting aside the “no written statement” order is bereft of any details. It is not pointed out as to when the respondents were arrested in connection with the criminal case, date of the release and the period during which they were residing at their native place. There is no averment as regards the reason for non-communication with their counsel. On the other hand, from

the material on record, it appears that the respondents were pursuing the litigation, in as much as, in December 2017, the respondents have changed their counsel and engaged the present counsel. There are no circumstances made out, as to why written statement was not filed by the respondents after filing their appearance through the Advocate on 28th July 2015. This Court cannot ignore the fact that on 29th June 2018, the petitioner had adduced evidence and on 18th January 2019, the petitioner has closed his evidence. By permitting the respondents to file written statement, at this stage, would amount to setting the clock back and the same cannot be done without sufficient and cogent explanation. It appears that the respondents have filed a one page application, as a matter of course, anticipating that by imposition of cost, the application would be allowed and this is precisely what has been done in the present case. It cannot be lost sight that the proceeding is of the year 2015 and, in 2019, if the application for setting aside “no written statement” order is allowed, it would amount to de-novo trial.

6. In light of the above, the impugned order dated 12th July 2019, cannot be sustained and is hereby quashed and set aside.

7. Writ Petition stands allowed in the above terms.

[Sharmila U. Deshmukh, J.]