

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 944 OF 2023**

Hon. Executive Engineer Public Works
 Department and Ors. .. Petitioners
 Versus
 Sumit Engineering Constructions Co. .. Respondent

-
- Ms. Savina S. Bangera, Advocate for Petitioners
 - Mr. Sandeep Koregave, Advocate for Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 14, 2023.

P.C.:

1. Heard Ms. Bangera, learned Advocate for Petitioners and Mr. Koregave, learned Advocate for Respondent.
2. The present Writ Petition takes exception to the order dated 18.06.2022 passed below Exh.25 in S.C.S. No. 55 of 2016.
3. Defendants have filed the application below Exh.25 to file their written statement on record and seek condonation of delay for filing the same to take the written statement on record.
4. By orders dated 26.07.2017 and 18.12.2017, the learned Trial Court directed that the suit would proceed *ex-parte* against the Defendants since Defendants did not file their written statement.
5. Defendants / Petitioners' case in the present Writ Petition as also before the learned Trial Court was that some of the documents which

were produced on record are not with them and they took time to collect the same. It needs to be mentioned here that the suit has been filed by the Respondent/Plaintiff in respect of a tender/works contract issued to them in the year 1985. According to the Plaintiff, considering the work that they had completed they were entitled to the outstanding amounts as stated in the suit plaint. The suit is however filed by the Plaintiffs in the year 2016. Mr. Koregave would argue that there was a continuing cause of action during the interregnum. But this will have to be a matter of trial.

6. Record indicates that on 25.10.2018, Defendants filed application for condonation of delay accompanied with their written statement. The learned Trial Court however rejected the same on the ground that Defendants were not entitled to file the same beyond the period of 90 days.

7. Record further indicates that application dated 25.10.2018 was specifically filed for condonation of delay which has been considered by the learned Trial Court by utilising its discretion under Order VII Rule 10. The learned Trial court has rejected the application of the Defendants / Petitioners herein.

8. However considering the aforesaid timeline and the *lis* between the parties, the suit before the learned Trial Court certainly cannot be proceeded with in the absence of the written statement and Defendants cannot be ousted on the ground of the discretion exercised

by the learned Trial Court in the facts of the present case. Every litigant has a right and should be given an opportunity to present its case. Admittedly, there is delay on the part of the Defendants but their application dated 25.10.2018 ought to have been considered and allowed in the facts of the case.

9. In view of the above observations, I am inclined to quash and set aside the impugned order dated 18.06.2022 passed below Exh.25 and the delay is condoned.

10. The written statement of the Defendants is directed be taken on record by the learned Trial Court.

11. At the joint request of both the learned Advocates, S.C.S. No. 55 of 2016 is expedited and shall be decided by the learned Trial Court as expeditiously as possible and in any event within a period of 12 months from today.

12. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2023.02.17
10:58:58
+0530