

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.928 OF 2022

Vinod Hanumandas Jayalwal and anr .Vs. Gangadharrao Manikrao Mathane and ors

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.A. Babrekar, Advocate for the petitioners.

Shri A.J. Gilda, Advocate for the respondent No.1.

CORAM : ANIL S. KILOR, J.

DATED : 24/01/2023

1. Heard.
2. In this writ petition, the order below Exh.24 rejecting application for setting aside ex-parte order and no written statement order against the defendant No.1 with permission to file counter claim, is under challenge.
3. Shri Babrekar, learned counsel for the petitioners submits that as the petitioner is working as Personal Assistant of local M.L.A., he could not take up time to attend the office of the lawyer and to give instruction for filing of written statement. It is submitted that the petitioners shall get a fair opportunity to defend his case and in absence of written statement, he would cause great prejudice. Accordingly, he submits that without considering the reasons given in the application for not filing the written statement, his request was rejected.

4. Shri Babrekar, learned counsel for the petitioners for this purpose, has placed reliance on the judgments of the Hon'ble Supreme Court of India in the case of *Sandeep Thapar Vs. Sme Technologies Private Limited*¹, *Shoraj Singh Vs. Charan Singh*², and the judgment of co-ordinate Bench of this Court in the case of *M/s Shree Kahan Nagar Co-op Soc.Ltd and anr Vs. Shailaja Umakant Achrekar and ors*³ in support of his contentions.

5. On the other hand, Shri Gilda, learned counsel for the respondent No.1 submits that the Hon'ble Supreme Court of India time and again has held that, the existence of sufficient cause and satisfactory reasons for permitting the defendant to file the written statement are imperative for exercise the discretion to grant extension of time.

6. It is submitted that in the present case no sufficient cause or the satisfactory reasons are given by the petitioners to permit him to file written statement beyond statutory period. For this purpose, Shri Gilda, learned counsel for the respondent No.1 has placed reliance on the judgment of co-ordinate Bench of this Court in the case of *Parasmal Daulatram Jain Vs. Rameshwar Rathanlal Karwa*⁴.

7. In the backdrop of rival contentions of both the parties, I have perused the documents filed along with the petition and the impugned order.

1 2014 DGLS(SC)3

2 2021 DGLS(SC) 695

3 WP No.5119/2021 D/d.20.01.2022.

4 2019 DGLS(Bom.) 901

8. The application for setting aside no written statement order, for setting aside ex-parte order and permission to file counter claim, discloses the reasons for not filing written statement which are as follows:

“2.It is submitted that the defendant No.1 did not received some of the documents required for the preparation of W.S. within the stipulated time. Moreover the defendant No.1 didn’t get the time to give the information about preparation of W.S. as he was completely busy in his officials duty being the P.A. of M.L.A. Shri Ravi Rana and being the election was going on. Hence he could not file his W.S. within the stipulated time.

3. The delay caused in filing the W.S. is not deliberate and the delay caused in filing the W.S. of defendant No.1 was not in the hands of defendant No.1. The defendant No.1 has good case on merits which can be seen from the counter claim filed by the defendant No.1 along with W.S.

4. It is submitted that defendant No.2 is residing at Ulhas Nagar, Dist. Thane and he did not get the reservation and tickets to which the Hon’ble Court on fixed dated, therefore the defendant No.1 could not attend this Hon’ble Court. Moreover the suit summons were misplace therefore defendant No.2 was able to contact the lawyer not could attend the Hon’ble Court but when defendant No.1 inform defendant No.2 about the above referred proceeding he immediately approach to the counsel and inform about the above said incident as well as given the information, about the preparation of W.S. and counter claim in above referred circumstances exparty order was came to be passed against the defendant No.2.”

9. The Hon'ble Supreme Court of India in the case of *Desh Raj* (Supra), has observed thus:

“18. The only defence taken to these repeated and blatant lapses is that the appellant’s counsel was not turning up. No attempt has been made to even proffer a reasoned justification or explanation, and it is clear that appellant is seeking condonation in a casual manner. This ought not to be permitted or encouraged. Courts must act stringently to ensure that all proceedings are decided within reasonable time, and it is but the duty of the judicial system to cultivate a culture of respecting deadlines and time of the Court, its officers as well as of adversaries.

19. Routine condonations and cavalier attitudes towards the process of law affects the administration of justice. It affects docket management of Courts and causes avoidable delays, cost escalations and chaos. The effect of this is borne not only by the litigants, but also commerce in the country and the public-in-general who spend decades mired in technical processes.”

10. The Hon'ble Supreme Court of India in the case of *Parasmal Daulatram Jain* (Supra), has observed thus:

“17. The question which comes to the fore is, whether the learned Judge was justified in permitting the defendant to file the written statement, once a finding was recorded that the reason ascribed by the defendant was not satisfactory. The sole reason assigned by the learned Judge was that in order to avoid multiplicity of proceedings and provide an opportunity to defendant to contest the claim

on merits, it was necessary to grant permission to the defendant to file the written statement. I am afraid to sustain this reasoning of the learned Judge. The WP-5873-18.DOC existence of a sufficient cause and a satisfactory reason for permitting the defendant to file the written statement are imperative for exercise of discretion to grant extension of time. From this standpoint, the existence of a satisfactory justification for granting extension of time to file written statement assumes the character of a foundational fact for exercise of the judicious discretion by the Court. It may not be in consonance with the spirit and object of the provisions of Order VIII Rule 1 to permit the filing of the written statement on the general premise of determination of the lis on merits. The said ground would be available in every case irrespective of the cause and the period of delay in filing the written statement.”

11. From the above referred observations, it is evident that the routine condonations and cavalier attitudes towards the process of law affects the administration of justice. It affects docket management of Courts and causes avoidable delays, cost escalations and chaos. The effect of this is borne not only by the litigants, but also commerce in the country and the public-in-general who spend decades mired in technical processes and therefore, unless there is existence of sufficient cause and satisfactory reason for permitting the defendant to file written statement which is imperative for exercise of discretion to grant extension of

time, the permission to file written statement at the belated stage cannot be granted.

12 In the present case, from the reasons stated in the application, it can be said that no satisfactory reasons are given by the petitioners for not filing the written statement within statutory period and in absence of such satisfactory reasons, in the light of observations made by the Hon'ble Supreme Court of India in the above referred judgments, I do not find any error committed by the learned trial Court in rejecting the application of the petitioners.

13. The authorities cited by the learned counsel for the petitioners are distinguishable on facts and therefore, are of no help.

In the circumstances, the writ petition is **dismissed**.

JUDGE