



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5791 OF 2023

M/s M. R. Group Through Its Proprietor
Junaid Khan Javeed Khan

VERSUS

Asma Parveen Mohd. Hamed Ali

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Mr. A. S. Kulkarni h/f Mr. S. S. Jadhav, Advocate for
the Petitioner

Mr. S. S. Kulkarni a/w Ms. Namita Thole i/by Ms. R. S.
Kulkarni, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JULY 26, 2024

PER COURT :

1. Petitioner is Defendant in Summary Suit No. 521/2020 and being aggrieved by rejection of application Exh. 14 and 21 for leave to defend has preferred this Petition.

2. The facts as they appear from the record can be narrated in nutshell as under:

Respondent/Plaintiff in Summary Suit No. 521/2020 claim recovery of amount of Rs. 5,41,118/-. A summons of said suit was served upon Defendant/Petitioner herein by paper publication and pursuant to the same, an application was filed through Advocate on 07.09.2021 seeking time to file written

statement. Thereafter, an application was filed vide Exh. 14 and 21 seeking permission to file leave to defend application. These applications are rejected by the Trial Court by passing impugned order.

3. Learned Counsel for the Petitioner submits that the Trial Court has not considered the facts involved in the case that Defendant was behind bars and only after his release on bail, he could file application for leave to defend. He submits that only for the reason that no application for condonation of delay was filed, it would not be justified for the Trial Court to dismiss the application. To support this submissions, he placed reliance on judgment of this Court in case of Hanumant Sahebrao Pawar vs. Devidas Kerban Biradar, Writ Petition No. 7916 of 2016.

4. These contentions are opposed by learned Counsel for Respondent/Plaintiff by submitting that not only application for condonation of delay was filed but there is no reason putforth even in this petition in order to justify the said delay. It is his contention that judgment cited supra has no application to the present case. According to him, having regard to the

scheme of Order XXXVII CPC, no interference is called in the impugned order.

5. There cannot be any dispute with regard to the fact that leave to defend must be sought by the Defendant within a period of 10 days after receipt of summons. The Defendant had appeared in the suit on 07.09.2021 and the application was not filed within 10 days thereof but is filed after three months. Similarly, application filed vide Exh. 14 simply stated that the Defendant has good defence. There was absolutely no other averment made in the said application in order to justify leave to defend. On 20.12.2021 another application vide Exh. 21 came to be filed seeking leave to defend. In this application there is no condonation of delay sought by the Defendant. Learned Trial Court has rejected the application on the ground that the same has not been filed within stipulated period so also application does not disclose any probable/reasonable ground to defend.

6. Perusal of the judgment in case of Hanumant Pawar (supra) shows that this Court has held that the rules of procedure exist for doing justice between the

parties and justice should not be made to suffer if for want of some expert advice, a party commits lapse in following the procedure. It is further observed therein that this is a case in which due to lack of suitable advice to be given to the party by his Advocate, delay condonation application was not filed. Therefore, the Court of the view that the party should not be made to suffer for something which was not done though ought to have been done by the expert representing him in this case. As far as present case is concerned, not only in the applications Exhs. 14 and 21 any such explanation is sought to be given but there is also no whisper in the Petition that owing to the ill/wrong advise of the Advocate, application for condonation of delay was not filed. Even at this stage no permission is sought to file application to seek condonation of delay thereof.

7. Having regard to these facts, the judgment in case of Hanumant Pawar (supra) would not come to the aid of the Petitioner. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)