

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9173 OF 2023

Abdulrajak Davalso Mulani

...Petitioner

Versus

Sanjiva Yallu Mullya (died) through Legal ...Respondents
Heirs and Ors.

Mr. Deepak Lad for the Petitioner.

Mr. Prajakt Arjunwadkar for Respondent.

CORAM : M.M. SATHAYE, J.

DATE : 16 JULY 2024

P.C. :

. Heard learned counsel for the parties. Perused the record.

2. The Petitioner/original Plaintiff is challenging the order dated 8th March 2023 passed by the 2nd Joint Civil Judge, Senior Division, Sangli, below Exh. 7 in Summary Suit No. 84 of 2022. By the said impugned order, the application filed by the Respondents/Defendants has been allowed and unconditional leave to defend has been granted thereby accepting written statement filed by the Respondents. It appears from the record that on the same day, the said suit has been converted into Regular Suit. Learned counsel for the Petitioner submits that this being a consequential order, is also under challenge.

3. Learned counsel for the Petitioner submitted that the Trial

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Court without any sufficient cause being shown, has allowed the application for granting unconditional leave to defend. He pointed out from application Exh.7 that it is not even supported by the affidavit and is filed by the Respondents' Advocate. He submitted that the impugned order is contrary to the provision of Order XXXVII Rule 3(7) of the Code of Civil Procedure, 1908 in as much as there is not even delay condonation or other application, much less case of sufficient cause made out.

4. On the other hand, learned counsel for the Respondents apart from defending the order, fairly submits that the Respondents have not filed any application seeking condonation of delay in filing either appearance or application for leave to defend. He however, submits that given an opportunity, such application/s will be filed, which can be considered on its own merits. He submits that Respondents deserve such an opportunity considering that it is a suit for recovery of money allegedly paid to their predecessor.

5. Perused the impugned order. The dates are undisputed, viz. the summons was served on 21st December 2022 and for the first time, the Respondents applied for leave to defend on 9th February 2023, which was beyond a period of 10 days. The impugned order shows that the transaction involved is alleged hand loan of Rs.4 lakhs which, according to the Petitioner, has been given by Petitioner to the predecessor of the Respondents. Admittedly, the Respondents

are legal heirs of the one Sanjiva Yallu Mullya, who had already expired when the suit was filed.

6. Considering the nature of controversy involved and the fact that the leave to defend is granted without there being any application seeking condonation of delay, the impugned order deserves to be set aside. However, at the same time, an opportunity to the Respondents/ Defendants to seek delay condonation and leave of the Court as contemplated under Order XXXVII Rule 3 of the Code of Civil Procedure, 1908, also needs to be granted.

7. In light thereof, the petition is disposed of by passing following order :

(i) Impugned order and consequential conversion of summary suit to regular suit, is quashed and set aside. The Respondents' application Exh.7 is restored to file. The Respondents are permitted to file necessary application/s seeking leave of the Court along with application for delay condonation within a period of 3 weeks from today.

(ii) If such application/s is filed by Respondents within the stipulated time, the Petitioner will be at liberty to file reply to the said application/s and the same shall be decided in accordance with law. Rival contentions of the parties are kept open.

(M.M. SATHAYE, J.)