

Amberkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7408 OF 2023**

Sulakshana Shantilal Pomani (Jain)

.. Petitioner

**Versus**

Appasaheb Ganpati Kagude & Ors.

.. Respondents

.....

- Mr. Ajit Kenjale a/w Mr. Azharuddin Khan for Petitioner
- Mrs. A.R.S. Baxi for Respondents

.....

**CORAM : MILIND N. JADHAV, J.**

**DATE : JUNE 14, 2024**

**P. C.:**

1. Heard Mr. Kenjale, learned Advocate for Petitioner and Mrs. Baxi, learned Advocate for Respondents.
2. On 14.02.2024 after hearing Mr. Kenjale, this Court passed the following order:-

*“1. Not on board. Mentioned. Taken on board.*

*2. Perused the praecipe dated 14.02.2023. Heard Mr. Kenjale, learned Advocate for Petitioner.*

*3. Impugned order is dated 13.12.2021 rejecting Misc. Civil Application No. 288 of 2015. Due to enormous delay of more than 7 years, the Application was preferred by the Applicant / Plaintiff under Section 151 of the CPC and the Indian Limitation Act. Trial Court has decreed the suit without written statement of Defendant. Applicant filed Regular Civil Appeal No. 182 of 2005 in the Appellate Court which came to be allowed. Thereafter it seems that the learned Appellate Court had allowed the Application to file written statement but despite that order passed in 2009, there is considerable delay of more than 7 years with Misc. Civil Application No. 288 of 2015 filed, which was determined in 2021. The aforesaid timeline suggests considerable delay at all levels.*

*4. An arguable case is made out by Mr. Kenjale for issuance of notice and calling for a reply from Respondents.*

5. *Issue notice to the Respondents made returnable on 06.03.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.*

6. *Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.*

7. *Stand over to 6<sup>th</sup> March 2024.”*

3. As stated above, delay is writ large at all stages. Be that as it may, Defendant (Petitioner herein) cannot be non-suited in view of the delay and more specifically so when the learned Appellate Court had allowed the Appeal and directed the Defendant to pay costs of Rs. 2000/- at the then time in 2015 which could not be paid by the Defendant. Today after a lapse of seven years out of which almost three years would be relegated and exempted due to Covid-19 pandemic period, the actual delay would be inevitably for almost four years.

4. Mr. Baxi would make one pointed submission on the issue of delay. She would submit that allowing this Petition and permitting the Defendant to revive the written statement would lead to revival of the suit. She would submit that Suit in the meanwhile has proceed and the Plaintiff's witness has been duly cross-examined in the

interregnum. Be that as it may, in view of the order passed by the learned District Court allowing the Appeal, I do not wish to substitute my views in so far as the issue of merits is concerned. Attempt is also made by the Plaintiffs to submit to this Court on the merits of the case but the same will have to be agitated before the learned Trial Court. The Appellate Court having been duly seized with the matter and having passed the order condoning the delay and allowing the written statement to be taken on record cannot be faulted with, save and except the fact that Defendant did not adhere to that order and did not deposit the costs. Merely because the costs were not deposited and there is delay, order rejecting the present Writ Petition would completely non-suit the Defendant and Defendant's case would have to proceed ex parte before the learned Trial Court. In the facts and circumstances of the present case, Plaintiffs can be adequately compensated considering that the delay has occurred only due to the non-payment of costs awarded by learned Appellate Court. In my view and opinion costs of Rs. 50,000/- are thus adequate, which shall be deposited by the Defendant in the Trial Court within a period of four weeks from today. If such costs are deposited by Defendant in the Trial Court, learned Trial Court is directed to permit the Plaintiffs to withdraw the same without any condition whatsoever on a simplicitor Application to be made by the Plaintiffs before the Trial Court. Subject

to payment of costs as directed, the impugned order dated 13.12.2021 is quashed and set aside. On deposit of costs, learned Trial Court shall exhibit the written statement which has been placed on record by the Defendant. It is evident from the order of the Appellate Court that the written statement has already been filed on record by the Defendant but the same has not been exhibited. Once that is done, the Suit shall proceed strictly in accordance with law.

5. In view of the above, learned Trial Court is directed to expedite the hearing of RCS NO. 20 of 1999 and decide the same as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law. It is clarified that the learned Trial Court shall not give any unnecessary adjournments to the parties unless they are absolutely necessary in the case of any urgency or emergency only.

6. All contentions of the parties are expressly kept open.

7. With the above directions, Writ Petition stands disposed.

[ MILIND N. JADHAV, J. ]

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by RAVINDRA  
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