

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.822 OF 2024

Dattatrya Ramdas Dashpute and Anr.

.. Petitioners

Versus

Habaji Genba Gaikwad and Ors.

.. Respondents

.....

- Mr. Amey Deshpande, Advocate for Petitioners.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 22, 2024

P.C.:

- 1.** Heard Mr. Deshpande, learned Advocate for Petitioners.
- 2.** The present Writ Petition takes exception to the order dated 07.11.2023 passed in Application filed below Exhibit-22 in Special Civil Suit No.284 of 2018.
- 3.** At the outset, Mr. Deshpande has drawn my attention to the specific facts of the case and would contend that last date for filing of Written Statement was 30.06.2020 which was during the COVID-19 Pandemic period. He would submit that Petitioners i.e. Defendants before the Trial Court were unable to file their Written Statement for several reasons which have been enumerated in the Application at page No.27 of the Writ Petition as also, in the present Writ Petition.
- 4.** He would submit that by virtue of the extant order dated 10.01.2022 passed by Supreme Court in Miscellaneous Application

No.21 of 2022 heard alongwith Miscellaneous Application No.29 of 2022 in *Suo Motu* Writ Petition (C) No.3 of 2023, the period between 15.03.2020 to 28.02.2022 notwithstanding the actual balance period of limitation remaining needs to be reduced in the facts of the Petitioners' case.

5. He would fairly submit that when Application dated 20.06.2023 was filed by Petitioners for condonation of delay and setting aside of order of 'no Written Statement', the aforementioned fact was not pleaded rather it was not to the knowledge of the Petitioners.

6. Hence, he would submit that in the Application dated 20.06.2023, Petitioners pleaded delay of 362 days. He would urge the Court that for filing the Application dated 20.06.2023, the impugned delay would therefore be a little over one month and to be precise the delay would be one month and seven days after giving benefit of 90 days period to file Written Statement from 01.03.2022 onwards. I agree with the submissions made by Mr. Deshpande.

7. Even though it was not pleaded by the concerned party, the impugned order ought to have been passed after taking into account the aforementioned order passed by Supreme Court so that benefit of the said order could be availed by the concerned party.

8. Considering the above and in view of the reasons mentioned

in the Writ Petition, the impugned order dated 07.11.2023 is quashed and set aside.

9. Consequentially Application dated 20.06.2023 filed by the Petitioners therefore stands allowed in terms of prayer clause (a). In so far prayer clause (b) of the Application is concerned, the delay of one month seven days as computed and alluded to hereinabove or any other delay stands condoned. The learned Trial Court is directed to take on record the Written Statement which has already been filed alongwith the Application dated 20.06.2023 by the Petitioners who are Defendants before Trial Court. Copy of the same shall be served on Plaintiffs.

10. Learned Trial Court shall proceed with the hearing of Special Civil Suit No.284 of 2018 strictly in accordance with law thereafter.

11. With the above directions, Writ Petition stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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