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

WRIT PETITION NO. 1521 OF 2020

Devendra Kishor Kale

Petitioner

.. (Orig. Defendant No.3)

Versus

Vimalbai Somnath More and Ors.

.. Respondents

-
- Mr. Gurudas S. Gorwadkar, Advocate for Petitioner.
 - Mr. Rushikesh G. Patil, Advocate for Respondent No.3.
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 04, 2024.

P.C.:

1. Heard Mr. Gorwadkar, learned Advocate for Petitioner and Mr. Patil, learned Advocate for Respondent No.3.

2. Writ Petition takes exception to the impugned order passed in Application filed below Exhibit “83” in Regular Civil Suit No.193 of 2010 dated 13.11.2019 which is at Exhibit “E” - page No.107 of the Writ Petition.

3. By virtue of the impugned order, Application filed by Defendant No.3 for setting aside “No WS” order dated 22.07.2015 and for permitting Defendant No.3 to file his written statement stands rejected.

4. Suit is filed in the year 2010 seeking a declaration and cancellation of the Power of Attorney executed between the Plaintiff and Defendant No.1. Defendant No.3 is a subsequent purchaser who has been impleaded on 02.04.2015. It is informed by Mr. Gorwadkar that some portion of the original Suit property has been transferred by Defendant No.1 to Defendant No.3 by virtue of a Registered Sale Deed dated 02.12.2013 and in that view of the matter, Defendant No.3 has been impleaded. He would inform the Court that Defendant No.3 appeared before the Court for the first time after receipt of summons on 09.04.2015 and ideally ought to have been filed his written statement by 09.05.2015. He would submit that Application was preferred for the first time for setting aside of the “No WS” order passed on 22.07.2015 after a delay of more than 3 and ½ years.

5. Mr. Patil has drawn my attention to the Application filed for setting aside of the “No WS” order and would contend that there is no averment made for seeking condonation of delay and the reasons given therein are vague and improper and no adequate details of the cause of action, rather sufficient cause has been explained.

6. I have perused the Application dated 14.02.2019 and more specifically paragraph No.1 thereof and the reasons for the delay stated therein by Defendant No.3. The reasons pertain to the medical condition of Defendant No.3 as also with respect to the instructions

required to be given to his Advocate. Admittedly, Defendant No.3 is a purchaser of a part of the Suit property by a Registered Sale Deed dated 02.12.2013. Non-suiting the Defendant No.3 at this stage without permitting him to file his written statement would be harsh, though admittedly there has been delay on his part in filing the written statement. One of the other submissions made by the learned Advocate for Respondents is that the matter is now closed for final hearing. This however is not true.

7. The learned Trial Court while dismissing Application has sought details about the medical condition of Defendant No.3 which prevented him from attending the Court towards sufficient cause. That ought not to have been called upon in view of the specific facts mentioned by the Applicant in his Application.

8. Be that as it may, the delay of 3 and ½ years in the facts and circumstances of the present case deserve to be condoned in view of the reasons mentioned by the Applicant in his Application dated 14.02.2019 subject to payment of costs of Rs.10,000/- to be paid the Plaintiff. The amount of costs shall be paid to the Plaintiff within a period of two weeks from today and receipt of payment of costs shall be placed before the learned Trial Court. Learned Trial Court is directed to accept the same on record and only thereafter allow Defendant No.3 to file his written statement which shall be filed within

a period of four weeks thereafter.

9. I am informed that the next date before the learned Trial Court is on 15.03.2024, on which date the Court shall pass suitable directions.

10. Needless to state that the order dated 22.07.2015 stands quashed and set aside and Application dated 14.02.2019 stands allowed subject to fulfillment of the aforesaid condition as directed.

11. It is clarified that this Court has not expressed any opinion on the merits of the matter.

12. At the joint request of both the learned Advocates, learned Trial Court is requested by this Court to determine, adjudicate and decide Regular Civil Suit No.193 of 2010 as expeditiously as possible and within a period of 8 months from today and pass a reasoned order in accordance with law.

13. It is clarified that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment only if it is utmost necessary.

14. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

15. All contentions of the parties are expressly kept open before the learned Trial Court.

16. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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Date: 2024.03.04
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