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

WRIT PETITION NO. 6924 OF 2023

Francis Anton Dalmet alias Almeida

.. Petitioner

Versus

Roy Thomas Futardo and Anr.

.. Respondents

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- Mr. J. A. Sarkhot i/by Ms. Devashree Raut, Mr. Mubeen Sirkhot and Mr. Ganesh Narula, Advocates for Petitioner.
 - Ms. Jonita D'abreo i/by JRA Law Associates for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 01, 2024.

P.C.:

- 1.** Heard Mr. Sarkhot, learned Advocate for Petitioner and Ms. D'abreo, learned Advocate for Respondents.
- 2.** After hearing Mr. Narula on 14.02.2024, this Court had passed the following order:-

"1. Not on board. Mentioned. Taken on board.

2. Perused the praecipe dated 14.02.2024. Heard Mr. Narula, learned Advocate for Petitioner.

3. This Writ Petition deserves to be allowed but subject to payment of costs. I have impressed about the same on Mr. Narula. Notice has already been issued by the Court. Application below Exh. 100 under O. VI, R. 17 of the CPC for amendment was granted on 09.03.2021. Thereafter there was a delay in carrying out the amendment. Defendants filed two specific proceedings thereafter as the Plaintiff derelicted and did not carry out the amendment. One was the Review Application and another was the Application under Exh. 120. After a hiatus of almost a year, Plaintiff filed Application below Exh. 123 seeking leave of the Court to carry out the amendment. It needs to be noted that the Application under Section 123 was

allowed on 20.07.2022 subject to payment of costs despite which the Plaintiff derelicted. The delay can only be attributed to the Advocate concerned appearing for Plaintiff. However, while considering the Application filed below Exh. 120 of the Defendants, learned Trial Court allowed the said Application. Plaintiff did not seek any extension of time after 20.07.2022. Being aggrieved with the impugned order dated 07.09.2022, present Writ Petition has been filed.

4. This is a classic case where delay is rampant but merely because of the delay, Plaintiff cannot be non-suited. Hence, I am inclined to allow this Petition but subject to payment of exemplary costs as also after hearing the Defendants.

5. Copy of this order shall be served by Mr. Narula on Respondents and file appropriate affidavit of service to that effect.

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 **1st March, 2024 at 2:30 p.m.***

3. Today, Ms. D'abreo appears for the Respondents. She would submit that the delay is rampant and writ large on the face of record. She would submit that this Court has already taken cognizance of the repeated delay which has occurred on three specific occasions on behalf of the Petitioner to have approached the learned Trial Court time and again and having been negligent and not abiding by the orders passed by the learned Trial Court. She would submit that despite the learned Trial Court allowing Petitioner's Application filed below Exhibit "123" as far back as on 20.07.2022 subject to payment of costs, the Plaintiff still did not abide by the said order. She would submit that it is only when the Application was filed below under

Order VI Rule 18 of the Code of Civil Procedure, 1908 (for short “CPC”), the Plaintiff realized the fact that the time allowed by the Trial Court while allowing Application below Exhibit “123” had lapsed and without seeking any extension before the Trial Court the present Writ Petition is filed.

4. She would therefore submit that the Plaintiff has repeatedly not followed the order of the Trial Court and therefore this Court should take a stringent view, rather strict view and allow the Petition and condone the delay by awarding exemplary costs.

5. Be that as it may, as noted by me in my previous order after hearing Mr. Narula, I am of the clear opinion that for the reasons mentioned therein, the Plaintiff cannot be non-suited in the facts and circumstances of the present case and I am also in complete agreement with the submissions made by Ms. D’abreo.

6. Petitioner / Plaintiff is therefore directed to pay exemplary costs of Rs.20,000/- to the Respondents / Defendants which shall be paid within a period of two weeks from today. Subject to payment of costs and the receipt of payment of costs to be placed before the learned Trial Court, learned Trial Court is directed to proceed with the hearing in Special Civil Suit No.80 of 2012.

7. In view of the above, Application under Exhibit “123” is allowed. Order dated 07.09.2022 to the extent of Exhibit “123” is set

aside. Hence, the order in review under Exhibit “125” dated 23.02.2023 is also therefore set aside. Amendment is permitted to be carried out with two weeks after payment of the costs as directed above before the Trial Court.

8. However, at the joint request of the learned Advocates, considering that the Special Civil Suit has been filed in the year 2012 and pending, the learned Trial Court is requested by this Court to dispose of the Suit proceedings as expeditiously as possible and in any event preferably within a period of one year from today.

9. It is clarified that the learned Trial Court shall not grant any unnecessary adjournments to the parties unless if it is utmost necessary due to any emergency / exigency.

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

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

12. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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