

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8840 OF 2023

Manohar Banda Waingade

.. Petitioner

Versus

Vasant Banda Waingade

.. Respondent

-
- Mr. Nagesh Y. Chavan for Petitioner
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 05, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 05.02.2024. Heard Mr. Chavan, learned Advocate for Petitioner.
3. The facts in the present case necessitate passing of the order today at the time of mentioning. Mr. Chavan would submit that order impugned in the present Writ Petition is passed on 15.04.2023 in Application filed below Exh. 25 by the learned Trial Court. It is at page Nos. 60-61 of the Petition. By virtue of that order, learned Trial Court has rejected Application below Exh. 25 of the Petitioner / Plaintiff seeking condonation of delay to file written statement to the counterclaim filed by Defendant and passed order of “No say” / “No WS”.

4. *Prima facie* reading of the order dated 15.04.2023 reveals that the learned Trial Court has made an earnest attempt to understand the details of delay as also the tenure of delay and consideration of reasons for the said delay for seeking condonation on behalf of Petitioner / Plaintiff to file the say / written statement to the counterclaim.

5. It is however seen that Application below Exh. 25 is filed in the most casual manner without stating any details whatsoever of the period of delay, save and except mentioning that the delay should be condoned and “No WS” / “No say” order should be set aside. This cannot be countenanced.

6. Mr. Chavan however in his usual fairness would concede that adequate details are not mentioned in the Application filed below Exh. 25. It is bereft of any specific submissions so as to enable the learned Trial Court to consider condonation. In that view of the matter, impugned order dated 15.04.2023 clearly records that the learned Trial Court is virtually helpless in view of the fact that no details whatsoever are mentioned in the Application dated 17.02.2023 filed below Exh. 25. Though no case for interference can be made out with the impugned order dated 15.04.2023 in view of the manner in which the Application below Exh. 25 has been filed, considering the facts and circumstances of the present case and the counterclaim filed by the

Defendant, the case of the Plaintiff cannot be non-suited due to the delay. There is one reason as to why I am inclined to consider the Plaintiff's case and give him one more opportunity because it is clearly stated by the Plaintiff in the Application filed below Exh. 25 that the delay did not occur deliberately. It is seen that not allowing the Plaintiff to file his say / WS to the counterclaim will cause severe prejudice to the Plaintiff.

7. In view of the above, I am inclined to set aside the order dated 15.04.2023 in the interest of justice. However, this is with a caveat that the Petitioner / Plaintiff shall file a fresh Application for seeking condonation of delay giving all relevant and necessary details therein for filing WS against the counterclaim filed by the Defendant. Mr. Chavan would submit that such a complete Application shall be filed by the Plaintiff within a period of two weeks from today. In that view of the matter, Application filed below Exh. 25 is permitted to be withdrawn by the Petitioner / Plaintiff. However considering the dereliction on the part of the Petitioner as observed above as also the delay which has occurred, I am inclined to levy costs on the Petitioner / Plaintiff of Rs. 5000/- to be paid to the Respondent / Defendant for allowing this Petition. Costs as directed shall be paid within a period of three weeks from today.

8. Copy of the receipt of payment of costs to the Defendant shall be placed before the learned Trial Court to enable it to consider taking up of the fresh Application to be filed by the Petitioner / Plaintiff as directed above.

9. In view of the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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