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

WRIT PETITION NO. 10065 OF 2023

Mrs. Shalini Mahesh Deshpande and Anr. .. Petitioners
Versus
Mr. Anant Pandurang Chavan .. Respondent

-
- Ms. Prema Gandhi a/w. Anish Shahapurkar i/by Ms. Sayali Sanjay Sawant, Advocates for Petitioners.
 - Ms. Vishaki Bhatia, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 17, 2024.

P.C.:

1. Heard Ms. Gandhi, learned Advocate for Petitioners and Ms. Bhatia, learned Advocate for Respondent.

2. This Writ Petition takes exception to the order dated 02.05.2023 passed by the learned Trial Court dismissing Notice of Motion No.1550 of 2023 by which the Defendants had sought condonation of delay of 2239 days i.e. approximately 6 years for seeking leave to file the written statement on the grounds stated in the Notice of Motion and which ought to have been noted by the learned Trial Court also. On 04.01.2024, I heard the Petitioners and following order was passed:-

“1. Not on Board. Mentioned. Taken on Board.

2. Writ Petition takes exception to the Order dated 2 May

2023 passed by the learned trial Court dismissing Notice Motion No.1550 of 2023 filed by the defendants seeking condonation of delay of 2239 days i.e. approximately six years on various grounds. Grounds are enumerated in the Order itself.

3. One of the principal ground is negligence of Advocate on record. But it is seen that in 2009, written statement infact was filed without seeking condonation of delay in filing the same and thereafter presumably no steps were taken. When I asked the Advocate appearing for Petitioners as to whether the suo moto period during Covid-19 has been excluded from the six years delay, she would submit that the same has not been excluded. Prima facie, it is seen that the reasons for the delay which have been averred cannot be presumed as intentional. In so far as the issue of granting waiver of the period of delay during Covid-19 pandemic is concerned, under the extant orders of the Supreme Court passed in Suo Moto Petitions, the said period necessarily would be excluded if so applied. In the present case, it is seen that the learned trial Court has expressly refused to apply the said Covid period for seeking condonation of delay as seen from un-numbered paragraph no.2 of the Order dated 2 May 2023. If that be the case, the period of delay undoubtedly would get reduced to less than 4 years.

*4. In view of the above, an arguable case is made out by the learned Advocate for the Petitioners for issuance of notice. Hence, issue notice to the Respondent returnable on **17 January 2024**. In addition to Court's notice, Petitioners are permitted to serve the Respondent by any legally permissible mode of service and file appropriate affidavit of service with tangible proof of having served him. Such affidavit shall be filed on or before the next date.*

5. Respondent is directed to remain present either through himself or through Advocate on the next adjourned date. Copy of this Petition and this order shall be served on Respondent by the learned Advocate for the Petitioners to inform him about the next date of hearing.

6. Stand over to 17 January 2024."

3. Today, Ms. Bhatia, learned Advocate appears for the contesting Respondent i.e. the Plaintiff in the Trial Court and would contend that the timeline in the present case would suggest gross and inordinate, rather unexplained delay on the part of the Petitioner in not filing the written statement and failing to appear on several

occasions. She has drawn my attention to the Roznama appended at Exhibit “B” to the present Writ Petition to contend that in 2017 as well as 2019 several opportunities were given by the learned Trial Court to the Petitioners despite which the written statement was not filed. Affidavit-in-Reply to oppose the Writ Petition has also been filed by the Respondents. She has drawn my attention to the said Affidavit. She would therefore contend that the present Writ Petition does not deserve be allowed and the impugned order dated 02.05.2023 be upheld. I have perused the impugned order and the pleadings in the present case and heard the learned Advocates appearing for the respective parties.

4. In view of the reasons noted in the order dated 04.01.2024 as also the fact that the said reasons have been considered *albeit* differently by the learned Trial Court, I am inclined to allow the present Writ Petition and set aside the impugned order dated 02.05.2023 in the interest of justice but subject to payment of costs of Rs.25,000/- to the Plaintiff i.e. Respondent in the present Writ Petition. The costs are awarded especially keeping in mind the timeline in the proceedings before the learned Trial Court clearly exhibit the delay despite several opportunities. From Exhibit “B” the same is clearly seen. The costs shall be paid to the Respondent by the Petitioners within a period of two weeks from today positively. Statement of the learned Advocate for the Petitioners is recorded by

the Court as an undertaking given to the Court.

5. In view of the above, the impugned order dated 02.05.2023 stands quashed and set aside.

6. The written statement shall be taken on record of the Suit proceedings by the learned Trial Court within a period of one week from the date of payment of costs to the Respondent after ensuring that the said costs have been paid.

7. At the joint request of both the learned Advocates, considering the nature of the Suit proceedings and the fact that it has remained pending since 2016, 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.

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

[MILIND N. JADHAV, J.]

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Date: 2024.01.17
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