

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13032 OF 2023

Smt. Kumud Sharad Palande

..... Petitioner

VERSUS

Ms. Roma Kedar Palande & Ors.

...Respondents

Mr. C.D.Nargolkar a/w. Mr.S.R.Nargolkar i/b. Mr.Aumkar Joshi
for the Petitioner.

Ms.Prachi Tatake for the Respondent Nos. 1 and 2.

Mr.Waseem Khan for the Respondent No.3.

CORAM: RAJESH S. PATIL, J.

DATE : 22 FEBRUARY, 2024

P.C. :-

This writ petition is filed by the original defendant no.2 challenging the judgment and order dated 3 March, 2022 passed in order below Ex.52 in R.A.D.Suit No.447 of 2021, and has confirmed by the judgment and order dated 11 August, 2023 passed by the Division Bench of the Court of the Small Causes.

2. The petitioner herein is the original defendant no.2, against

whom her daughter-in-law had filed a suit for declaration of tenancy in respect to the suit premises.

3. For sake of brevity, the parties are hereinafter referred as per their nomenclature in Trial Court. Admittedly, the suit summons was served on the defendant no.2 on 4 May, 2021. Hence, 30 days period would have come to an end on 3 June, 2021. The defendant no.2 on 21 December, 2021 filed an application Ex.52 for condoning the delay in filing the written statement and seeking a permission to take on record her written statement.

4. The said application for condonation of delay in filing the written statement was opposed by the plaintiff. Hence, the Single Judge of the Court of Small Causes heard both the parties and by its judgment and order dated 3 March, 2022, rejected the application Ex.52, which sought condonation of delay in filing written statement.

5. Being aggrieved by the rejection of the delay condonation application, the original defendant no.2 filed Revision before the Division Bench of the Court of Small Causes. The Division Bench of the Court of Small Causes thereafter heard both the parties and by its order dated 11 August, 2023 rejected the Revision Application No. 119 of 2022.

6. The present writ petition challenges both the orders passed by the Trial Court and the Division Bench of the Small Causes Court, thereby rejecting the delay condonation application filed by the original defendant no.2 in filing her written statement.

7. Mr.C.D.Nargolkar, learned counsel appeared on behalf of the original defendant no.2.

(i) Mr.Nargolkar submitted that the summons was served on the defendant no.2 during the pandemic period and in the pandemic period, itself, the defendant no.2 preferred an application

dated 21 December, 2021 for condoning the delay in filing the written statement and further sought permission to take on record the written statement.

(ii) Mr. Nargolkar submitted that after the summons was served on defendant no.2, immediately thereafter the defendant no.2 had preferred an application seeking rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure on various grounds as stated in the said application.

(iii) Mr. Nargolkar also submitted that after the summons was served on the defendant no.2, the plaintiff preferred an application seeking amendment to the plaint. The said application of the plaintiff granting her amendment to be carried

out in the plaint, was ordered on 25 October, 2021. He further submitted that thereafter, there was Diwali Vacation. Hence, on 21 December, 2021, the defendant no.2 preferred an application to take on record the written statement along with delay condonation application.

(iv) So also, according to Mr.Nargolkar , various proceedings were filed by the defendant no.2 and as also, by the plaintiff against each other.

(v) Mr. Nargolkar thereafter submitted that the writ petition requires to be allowed and the impugned order passed by the Courts be quashed and set aside and the written statement filed by the defendant no.2 be taken on record.

8. Ms.Prachi Tatate, learned counsel appeared for the original plaintiff and made her submissions :-

(i) Ms.Tatate submitted that the defendant no.2 was appearing in the suit after the summons was served on her. She submitted that after the summons was served on 4 May, 2021, the defendant no.2 appeared through her advocate on 6 May, 2021 and immediately, thereafter, on 7 June, 2021, the defendant no.2 preferred an application seeking rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure.

(ii) She further submitted that the party who is well aware about the proceedings being pending in the Court, and who is filing various applications could not be granted liberty at a belated stage to take written statement on record.

(iii) She submitted that the orders passed in Suo-motu Writ Petition (Civil) No. 3 of 2020 does not come to the rescue of such litigant who is well

aware of the filing of the proceedings.

(iv) She submitted that even though the proceedings were filed in the pandemic period, the defendant no.2 cannot take advantage of the fact that the Supreme Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020* had extended the period for the purpose of limitation and filing the applications/petitions/suits/appeals.

(v) Ms.Tatake relied upon an Order dated 17 December, 2021 passed by the Single Judge of Delhi High Court in the matter of ***HT Media Limited & Anr. vs. Brainlink International, Inc. & Anr.*** passed in CS (Comm) No. 119 of 2020. She submitted that in this order, HT Media Limited had submitted that the defendants were fully aware of the proceedings being filed, they participated on various dates including in

mediation and chose not to file the written statement. Hence, the Single Judge of the Delhi High Court, did not condone the delay in filing the written statement. She submitted that the said order of the Delhi High Court was challenged by the defendant by way of Special Leave Petition, to the Supreme Court. She further submitted that the Supreme Court by its order dated 14 March, 2022 declined to interfere with the order passed by the Single Judge of the Delhi High Court. She submitted that the ration of the said order passed by Delhi High Court, which was confirmed by Supreme Court, will be applicable to the present proceedings. Hence, the writ petition should not be entertained.

9. I have heard both the sides and I have taken into consideration the fact that the present suit arises out of the

R.A.D. proceedings (suit for declaration of tenancy) under the Maharashtra Rent Control Act.

10. Admittedly, the suit summons was served on the defendant no.2 on 4 May, 2021. Therefore, the period of 30 days for filing the written statement would have come to an end on 3 June, 2021. There is also no dispute that the original plaintiff preferred an application for amendment of the plaint on 28 June, 2021 and the said application was allowed by order dated 23 September, 2021. Thereafter, the amended plaint was served on the defendant no.2 only on 25 October, 2021. Soon thereafter, the Court was closed down for Diwali Vacation and on 21 December, 2021, the defendant no.2 preferred an application Ex.52, seeking condonation of delay, if any, in filing the written statement and seeking the permission to take on record written statement.

11. There is no dispute that the service of summons, so also the application preferred by the defendant no.2 for condonation of

delay were preferred during the pandemic period. It appears that the defendant no.2 himself was under a doubt whether there was any kind of delay in filing the written statement. Supreme Court in the proceedings of Suo-motu Writ Petition (Civil) No. 3 of 2020 has held that where the limitation period would have expired during the period between 15 March, 2020 till 14 March, 2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1 March, 2022.

12. Paragraph (3) of the order dated 10 March, 2022 passed in Suo-motu Writ Petition (Civil) No. 3 of 2020 is reproduced hereinbelow :-

(iii) In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

13. According to me, the present proceeding is squarely covered by the order passed by the Supreme Court in Suo-motu Writ Petition (Civil) No. 3 of 2020.

14. The submissions of the original plaintiff as regards ratio laid down in the order passed by the Single Judge of Delhi High Court on 17 December, 2021. It is pertinent to note that in the first place, the said order is passed in a proceeding under the commercial suit falling under the Commercial Courts Act. A bear reading of the order shows that it is pertaining to the trade mark proceedings. Therefore the observations made in the said order are pursuant to the facts involved in that particular case. Hence, the Supreme Court while deciding the Special Leave Petition from the order passed in *HT Media Limited* (supra) also mentions that in the facts and circumstances of the said case. According to me, since the facts involved in the *HT Media Limited* (supra) case is completely different from the present proceeding. The ratio of the said judgment will not be applicable

to the present proceedings and in any case, the observations made by the Judge of the Delhi High Court in the case of ***HT Media Limited*** (supra) was only an Order and not a Judgment.

15. Therefore, the order passed by Delhi High Court in case of ***HT Media Limited*** (supra) and further order passed by the Supreme Court in the said proceedings will not be applicable to the present proceedings, which does not arise from a commercial suit.

16. Hence, Rule is made absolute. Writ petition is allowed in terms of prayer clauses (a), (b) and (c). The said prayer clauses (a), (b) and (c) reads as under :-

(a) This Hon'ble Court be pleased to issue a Writ of Certiorari, or any appropriate Writ, Order or Direction under Article 227 of the Constitution of India and quash and set aside the impugned Order dt. 3.3.2022 at Exh. G, passed in the RAD Suit No. 447/2021 by the Hon. Small Causes Court, Mumbai ;

(b) This Hon'ble Court be pleased to issue a Writ of Certiorari, or any appropriate Writ, Order or Direction under Article 227 of the Constitution of India and quash and set aside the impugned Order dt. 11.8.2023 at Exh. I passed in the Revision Application No. 119/2022 by the Hon. Small Causes Appellate Court, Mumbai ;

(c) This Hon'ble Court be pleased to direct the Hon. Small Causes Court, Mumbai, to take the Written Statement filed by the Petitioner (Defdt. 1) dt. 21.12.21 which was filed on record of R.A.D.Suit No. 447 of 2021.

17. At this stage, Ms.Prachi Tatake, learned counsel appearing for the original plaintiff is seeking stay to the execution of this judgment and order. Mr.Nargolkar has strongly opposed the same. Hence, the request made Ms.Tatake is rejected.

[RAJESH S. PATIL, J.]