

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14053 OF 2023

Mrunalini Jai Munim & Anr.

.. Petitioners

Versus

Sahakar Maharashi Shankarrao Mohite Patil

Sahakari Sakhar Karkhana Ltd & Ors.

.. Respondents

.....

- Mr. Mustafa Doctor, Senior Advocate a/w Mr. Gaurav Mehta, Mr. Dhvani Mehta Desai and Ms. Sunain Masand for Petitioners
- Ms. Harsha Shah a/w Mr. Yatin R. Shah, Mr. Vipul Makwana and Mr. Keyur Adhvarya for Respondent No. 1

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 29, 2024

P. C.:

1. Heard Mr. Doctor, learned Senior Advocate for Petitioners and Ms. Shah, learned Advocate for Respondent No. 1.

2. Present Writ Petition takes exception to the order dated 19.10.2023 passed by the learned City Civil Court, Mumbai whereby Notice of Motion No. 1829/2022 filed by the newly impleaded Defendant Nos. 1(b) and 1(c) stands dismissed and disposed of. It is seen that the said Application was filed for condonation of the delay of approximately 77 days as calculated by them in their affidavit in support dated 06.05.2022 for filing the written statement.

3. It is seen that by order dated 07.07.2022, learned Trial Court had posted the matter for filing written statement of these Defendants. That order is at page No. 42 of the Writ Petition.

4. Perused the impugned order. Both learned Advocates are *ad idem* on the issue that legal heirs of deceased Defendant No. 1 have adopted the written statement filed by the original Defendant. However while taking their written statement on record, learned Trial Court has gone into the contents of the written statement without even condoning the delay and opined on the issue of inconsistent plea taken by them which is found stated in the impugned order.

5. Mr. Doctor on instructions and also has in writing in the note (written submissions) given on behalf of Petitioners today, while referring to paragraph No.7 of the said note would point out that Petitioners i.e. legal heirs of deceased Defendant do not wish to lead any further evidence, which clearly implies that they shall not lead any evidence and the matter can be proceeded with for final arguments. Hence delay in filing the written statement of 77 days stands expressly condoned, however with a caveat that the written statement filed shall be considered by the learned Trial Court strictly in accordance with law in so far as there is inconsistent plea taken by Defendants. Needless to state that all defences available to the legal heirs of the

original deceased Defendant are expressly kept open strictly in accordance with law.

6. With the above direction, the impugned order dated 19.10.2023 is quashed and set aside with a direction to the learned Trial Court to adhere to the aforementioned directions. It is however clarified that learned Trial Court shall not be influenced by any of the observations and findings rendered in the impugned order since they are *prima facie* findings and the parties shall be at liberty to argue their case on the basis of the issues framed and their respective pleadings. This shall however not preclude the Defendants to take out any Application before the learned Trial Court, if it is so available to them in law and if done, it shall be strictly decided in accordance with law.

7. Considering that the Suit is of the year 1993, learned Trial Court is therefore requested to dispose of the Suit as expeditiously as possible and in any event within a period of six months from today. Parties shall not take any unnecessary adjournments. Trial Court shall also not give any adjournments, unless it is utmost necessary and there is an emergency. Both parties have agreed to co-operate with the Trial Court.

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

[MILIND N. JADHAV, J.]

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