

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 900 OF 2024

Santosh Kashinath Chavan & Anr.

.. Petitioners

Versus

Uday Kashinath Chavan

.. Respondent

-
- Mr. Roshan Sawant i/by Mr. Kaustubh Patil for Petitioners
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 23, 2024

P. C.:

1. Heard Mr. Sawant, learned Advocate for Petitioners.
2. The order under challenge is dated 10.08.2023 passed by the learned Trial Court in Notice of Motion No. 1455 of 2023 rejecting the Application for seeking condonation of delay in filing written statement by the Defendants and for setting aside the exparte order passed against Defendant No. 2.
3. Mr. Sawant appears for Applicants i.e. both the Defendants before the Trial Court to challenge the impugned order. Briefly stated it is borne out from the record that Defendant No. 1 had appeared before the learned Trial Court on 17.02.2020 and had received copy of the plaint whereas it is recorded in the impugned order that Defendant No. 2 was duly served on 18.03.2021. Though the service on both the Defendants is one year apart, it needs to be stated that pursuant to the

aforesaid service, Covid-19 pandemic lockdown came into effect. Record further reveals that since within a stipulated period of 30 days and the extendable period both, the Defendants did not file their written statement, the matter was prolonged and ultimately by order dated 11.08.2022, learned Trial Court passed the order of “No Written Statement” against Defendant No. 1 and the ex parte order to proceed against Defendant No. 2 without written statement. According to Petitioners / original Defendants, if the aforementioned dates are taken and the date of filing of the Notice of Motion is taken, there would be a delay of 718 days. *Prima facie*, it is seen that the Petitioners have not computed the exemption that they would be entitled to in view of the extant orders passed by the Supreme Court in *Suo Motu Writ Petition (C) No. 3 of 2020* and companion matters. In that view of the matter, delay of 718 days would undoubtedly be reduced to much less. The precise computation of the number of days of delay is not calculated by the Petitioners. The impugned order is passed on the basis that no reasons are assigned by Defendants save and except to state that during the interregnum parties were attempting to reconcile and settle their dispute amicably and due to lack of knowledge as also the poor financial condition of the Petitioners, the delay had occurred. Discretion has been exercised by the learned Trial Court while rejecting the reasons advanced by the

Defendants. However, I disagree with the reasons given by the learned Trial Court and in view of the above observations and findings, I am inclined to condone the delay to enable Defendant Nos. 1 and 2 to file their written statement before the learned Trial Court subject to payment of costs of Rs. 6000/- (Rs. 3000/- each) to be paid by both the Defendants to Kirtikar Law Library, High Court, Mumbai within a period of one week from today. Mr. Sawant agrees to pay the costs as directed.

4. In view of the above, the impugned order dated 11.08.2022 of 'No Written Statement' qua Defendant No. 1 stands quashed and set aside. Equally the impugned order directing the suit to proceed exparte against Defendant No. 2 is also quashed and set aside. Defendant Nos. 1 and 2 are directed to file their written statement within a period of one week from the date of payment of costs as directed by this Court.

5. On placing the receipt of payment of costs having been paid before the learned Trial Court, the learned Trial Court shall allow the written statements filed by Defendant Nos. 1 and 2 to be taken on record and not otherwise. It is made clear that in any event time granted by this Court shall not be extended for payment of costs or for filing the written statements.

6. With the above directions, Writ Petition is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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