

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10039 OF 2024

Anil Baburao Jadhav & Ors.

.. Petitioners

Versus

Tatyabhau Nana Jadhav & Ors.

.. Respondents

.....

- Mr. Shivaji Masal for Petitioners
- Mr. Vignesh Ashokan for Respondent No. 1

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 19, 2024

P. C.:

1. Heard Mr. Masal, learned Advocate for Petitioners and Mr. Ashokan, learned Advocate for Respondents.

2. Perused the order dated 05.08.2024. Mr. Ashokan has filed affidavit in reply dated 16.08.2024 on behalf of Plaintiff (Respondent No. 1 herein). Same is taken on record.

3. It is seen that the Plaintiff has resisted the Writ Petition on the ground that there is substantial delay and therefore the common order dated 16.06.2023 has been correctly passed. According to the Plaintiff, the day to day delay has not been explained by the Defendant Nos. 1 to 3 and therefore the Application has been correctly determined. He would submit that witness action is about to commence in the Suit. However in so far as the observations contained in paragraph No. 7 of the order dated 05.08.2024 passed by

this Court are concerned, Plaintiff's affidavit in reply clearly supports the same. Plaintiff has asserted that it is true that the Court appointed Court Commissioner pursuant to the survey has shown that it is the Defendant Nos. 4 to 6 who have made encroachment on the Plaintiff's Suit property. These averments of Plaintiff are made in paragraph No. 9 of the affidavit in reply. Once the case of Defendant Nos. 1 to 3 is itself supported by the Plaintiff, then these Defendants will have to be given an opportunity to place their written statement on record, otherwise it would be a travesty of the justice if the Defendants are not able to plead their case as they will stand non-suited completely. However this does not mean that allowing Defendant Nos. 1 to 3 to file their written statement on record would wipe out the issue of substantial delay which is writ large on the face of record in the present case. However, while dealing the issue of delay in paragraph Nos. 3 to 6 of the previous order dated 05.08.2024, I have considered the submissions made by Mr. Masal, learned Advocate for Defendant Nos. 1 to 3 (Petitioners herein). The facts of this case are peculiar and different. It is seen that the delay would stand reduced to approximately 8 & ½ years in the present case. However in the peculiar facts and circumstances of the present case, it cannot be accepted as an universal proposition that if there is an abnormal delay, condonation has to be refused. As noted, the facts as noted in

the Commissioner's report will have to be brought on record. I am of the opinion that Defendant Nos. 1 to 3's case therefore deserves consideration. However condonation of the delay of approximately 8 & ½ years is not unconditional since substantial prejudice will be caused to the Plaintiff's Suit which is languishing in the Trial Court. In that view of the matter, I am of the opinion that in the facts and circumstances of the present case, balance of convenience can be achieved by subjecting Defendant Nos. 1 to 3 to substantial costs so as to ensure that irreparable damage caused if the delay is condoned in view of the Court Commissioner's report which clarifies the status of the suit property as on date.

4. In view of the above, common impugned order dated 16.06.2023 is quashed and set aside subject to Petitioners paying of costs of Rs. 25,000/- to the Plaintiff within a period of two weeks from today positively. Subject to payment of costs and producing the receipt thereof before the learned Trial Court, it is directed that if the written statement is not filed, the same is permitted to be filed before the learned Trial Court and if written statement is already filed, then the learned Trial Court shall exhibit the same and proceed further with the Suit strictly in accordance with law.

5. All contentions of the parties are expressly kept open without opining anything on merits.

6. Writ Petition is allowed and disposed.

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[MILIND N. JADHAV, J.]

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