

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4886 OF 2024

M/s. Vinamra Developer and Ors.

.. Petitioners

Versus

Uday Tukram Salian and Anr.

.. Respondents

.....

- Mr. Bhushan Ulhas Deshmukh, Advocate for Petitioners.
- Mr. Prashant Trivedi i./by Ms. Sudha Dwivedi, Advocate for Respondents.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 26, 2024

P.C.:

1. Heard Mr. Deshmukh, learned Advocate for Petitioners and Mr. Trivedi, learned Advocate for Respondents.

2. Writ Petition impugns order dated 05.09.2023, *inter alia*, allowing Notice of Motion No.882 of 2023 to the extent of prayer clause (a) and directing Written Statement of Defendant to be taken on record. Written Statement filed by Defendants is marked as Exhibit-2 in the suit proceedings. The suit is required to be proceeded further after framing of issues. When this Petition was heard at time of mentioning on 13.03.2023, this Court passed the following order:-

"1. Not on board. Mentioned. Taken on board.

2. Perused the praecipe dated 13.03.2024. Heard Mr. Bende, learned Advocate for Petitioners.

3. Present Writ Petition impugns the order passed by learned Trial Court allowing written statement of the Defendants to be taken on record by condoning delay of more than five years. It is the case of the

Petitioners that despite the Petitioners having specifically objected to the Application filed by Defendants for condonation of delay, said reply of the Petitioners has not been considered by learned Trial Court while passing the impugned order.

4. I have impressed upon Mr. Bende that this Court would also be inclined to consider upholding and sustaining the order passed by the learned Trial Court in so far as condonation of delay is concerned since the Court cannot non-suit a litigant merely because there is a delay of five years and more specifically the Defendants in the present case.

*5. At the request of Mr. Bende, stand over to **20th March, 2024 at 2:30 p.m.** It is made clear that this Petition shall be disposed of at the stage of admission on that date.”*

3. I have also perused the Application made by Respondents namely Defendants i.e. Notice of Motion No.882 of 2023 and perused Affidavit-in-Support of the said Notice of Motion. The Defendants have explained the delay satisfactorily in their Affidavit-in-Support and the same has been considered and accepted. In that view of the matter and reasons stated in paragraph Nos.3 and 4 of my order dated 13.03.2024, the impugned order dated 05.09.2023 I am not inclined to interfere with the order and it stands sustained.

4. The, learned Trial Court is directed to decide Special Civil Suit No.3389 of 2017 as expeditiously as possible and in any event within a period of one year from today after hearing both the sides strictly in accordance with law. Both parties are directed to co-operate with the learned Trial Court. Trial Court is directed not to give adjournments to the parties and to give adjournments only if they are utmost necessary due to any emergency or exigency.

5. Mr. Deshmukh would submit that there is admittedly a delay of three years since the suit summons were served on 13.02.2018 and thereafter till 23.02.2023 for a period of five years, the Defendants did not show his *bonafides* and file written statement. Out of period of five years, it is contemplated that limitation for the period of 15.03.2020 to 28.03.2022 has been arrested vide extant order passed by the Supreme Court in *Suo Motu* Writ Petition No.3 of 2020 for the COVID period despite which there will still be a delay of little over three years.

6. In view of the admitted delay involved, Defendants are directed to pay costs of Rs.5,000/- be the Plaintiffs. The costs shall be paid to the Plaintiffs by Defendants within a period of two weeks from today.

7. With the above directions, Writ Petition is dismissed and disposed.

[MILIND N. JADHAV, J.]

H. H. SAWANT

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