

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7529 OF 2024

Vishwanath Dagdoba Hule

.. Petitioner

Versus

Water Resource Department,
Government of Maharashtra and Ors.

.. Respondents

-
- Mr. Prathmesh Seth, Advocate a/w. Mr. Saurabh A. Saxena,
Advocate i/by M/s. SAS Law Associates for the Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 10, 2024.

P.C.:

- 1.** Heard Mr. Seth, learned Advocate for Petitioner.
- 2.** Application of the Writ Petitioner under Order VII Rule 11 of the Civil Procedure, 1908 to oppose the counter claim filed by Defendant No.5 stands rejected by the impugned order dated 13.09.2023.
- 3.** Briefly stated, the Suit is instituted by the Plaintiff for recovery of amount of Rs.81.96 Lakhs alongwith damages in respect of works contract. The Suit is filed in the year 2013. There was protracted delay on the part of the Defendants. Hence, “no WS Order” was passed on 19.03.2014 which was set aside after a hiatus of 7 years on 07.01.2020 in the Application filed for setting aside of the “no WS Order”. Defendants did not state about its counter claim in its

Application. However pursuant to that order when the written statement of the Defendants was taken on record in paragraph No.48 of the written statement, the Defendants for the first time raised a counter claim in paragraph No.48 of its written statement.

4. Mr. Seth has drawn my attention to the previous order dated 07.01.2020 passed by the learned Trial Court wherein the Application for setting aside the “no WS Order” was allowed, *inter alia*, allowing the Defendants to place their written statement on record. In that Application, the learned Trial Court has itself opined and held that there is a delay of 5 years in filing the written statement on the face of record. In fact, the delay is not 5 years, but more than 7 years on the face of record itself. In that view of the matter, Application filed below Exhibit “40” by the Plaintiff to challenge the counter claim ought to have been considered. The learned Trial Court has further held that issue of limitation is a mixed question of law and facts and can be proved at the time of trial and has further opined that prejudice caused to the Plaintiff can be compensated by awarding costs.

5. One of the issue considered by the learned Trial Court is that the Defendants being Government would be entitled to a long period of limitation under Article 112 of the Limitation Act, 1963. This appears to be the correct view.

6. In view of the above, I am inclined to accept the findings returned in the said order and I do not find any reason to interfere with the order dated 13.09.2023 passed by the learned Trial Court. However considering the timeline and prejudice that would be caused to the Plaintiff, the learned Trial Court is directed by this Court to dispose of Suit proceedings as expeditiously as possible and in any event within a period of six months from today.

7. Both the parties shall appear before the Trial Court on 13th June, 2024 at 11:00 a.m. alongwith a server copy of this order and draft issues and issues shall be settled on that date or any date next convenient to the Trial Court at its discretion.

8. It is clarified that the learned Trial Court shall not grant any unnecessary adjournments to the parties unless if it is utmost necessary due to any emergency / exigency in adjudicating and deciding the Suit proceedings.

9. Parties are directed to co-operate with the learned Trial Court for expeditious disposal of the Suit proceedings as directed.

10. All contentions of the parties are expressly kept open.

11. With the above directions, Writ Petition stands disposed.

[MILIND N. JADHAV, J.]

Ajay

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date:
2024.06.10
18:00:44
+0530