

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7723 OF 2024

Seema Ram Thakur & Ors.

.. Petitioners

Versus

Menghraj Sadhuram Rawalani & Ors.

.. Respondents

.....

- Mr. Pradeep Thorat i/by Mr. S.R. Gupta for Petitioners
- Ms. Ieecha D. Pokale for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 12, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 12.09.2024.
3. Heard Mr. Thorat, learned Advocate for Petitioners and Ms. Pokale, learned Advocate for Respondents.
4. By virtue of the impugned order dated 08.12.2023 passed by learned Trial Court in Notice of Motion No. 3768 of 2022, the Notice of Motion filed by Defendant Nos. 1 to 3 (Petitioners herein) for setting aside exparte judgment and decree dated 13.12.2016 and no written statement order dated 16.07.2008 by condoning delay of 2112 days in filing the Notice of Motion and for permission to file the written statement on record stands partly allowed.

5. The delay caused in taking out Notice of Motion undoubtedly is writ large on the face of record as can be seen from the aforesaid two dates. No written statement order was passed on 16.07.2008 whereas the exparte judgment and decree was passed on 13.12.2016. Justice has been done by the Trial Court but not completely is what I can see. That apart it is seen that learned Trial Court has levied cost of Rs. 5000/- on Defendants for setting aside the judgment and decree which is payable to the Plaintiff.

6. Mr. Thorat would submit that if the said exparte judgment and decree is set aside by the Trial Court, Defendants' defence by virtue of the written statement is required to be permitted so that the suit can be tried and taken to its logical end. Mr. Thorat also agrees to the fact that delay is writ large on the face of record. However, he would submit that if Defendants are precluded from filing their written statement, it would once again revert back to the same position where Plaintiff would otherwise get a complete walkover and Defendants' defence will be completely ousted, resultantly non-suiting the Defendants.

7. *Per contra*, Ms. Pokale in her usual fairness would submit that the delay as can be seen from the twin dates i.e. no written statement order dated 16.07.2008 and exparte judgment and decree dated 13.12.2016 is clearly attributable to the lethargy of the Defendants.

She would submit that learned Trial Court has awarded costs of Rs. 5000/- for setting aside of the exparte judgment and decree. She would urge the Court to impose substantial costs if the Court is inclined to accept the case of the Petitioners i.e. Defendants and condone the delay.

8. After perusing the pleadings and the impugned order, it is seen that once the Trial Court has set aside the exparte judgment & decree dated 13.12.2016, the Motion filed by Defendants for setting aside no written statement order also ought to have been allowed in the interest of justice. On the scale of balance of convenience in the facts of this case, learned Trial Court ought to have awarded appropriate costs so that prejudice caused to the Plaintiff is ameliorated to a certain extent. By merely awarding costs of Rs. 5000/- for setting aside the exparte judgment & decree after a substantial delay and not setting aside the no written statement order, justice is not done either to the Defendants nor the Plaintiff. The submissions made by Mr. Thorat are fair. In fact I am inclined to also accept the submissions made by Mr. Thorat to the extent that no written statement order therefore deserves to be set aside.

9. In view of my above observations, the order of no written statement dated 16.08.2008 passed against Defendants is quashed and set aside. Resultantly allowing Notice of Motion No. 3768 of 2022 to

that extent also. However, granting this order is certainly not unconditional, otherwise it will cause prejudice to the Plaintiff. This order is passed subject to Petitioners - Defendants paying costs of Rs. 50,000/- to the Plaintiff within a period of four weeks from today. Upon payment of the said costs and receipt of the same being produced before the Trial Court and on producing the server copy of this order, the no written statement order dated 16.07.2008 shall stand set aside by the Trial Court and Defendants will be permitted to file their written statement as directed herein.

10. With the above directions, Writ Petition stands allowed and disposed.

[MILIND N. JADHAV, J.]

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