

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8408 OF 2024

Kulswamini Industries
Pro. Pra. Sneha Abhay Mete

.. Petitioner

Versus

Kedarnath Firewood Depo,
Pro. Pra. Ravindara Krushna Magdum

.. Respondent

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• Mr. Nikhil N. Pawar, Advocate for Petitioner.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 21, 2024.

P.C.:

- 1.** Heard Mr. Pawar, learned Advocate for Petitioner.
- 2.** The twin orders dated 12.10.2023 and 13.03.2024 which are appended at page Nos.24 and 30 of the Writ Petition passed below Exhibit “15” and Exhibit “21” by the learned Trial Court are the subject matter of challenge in the present Writ Petition.
- 3.** The second order dated 13.03.2024 is an order passed in Review and therefore actual and real challenge is maintained to the order dated 12.10.2023 since the learned Trial Court holds that the order dated 12.10.2023 ought to have been challenged in the Superior Court.

4. Be that as it may, there is a delay of 111 days in failing to appear before the learned Trial Court on service of the Suit Summons on the part of the Defendant. Considering that it is a Summary Suit and it needs to be speedily disposed which is the consideration which weighed with the Trial Court, the Application for condonation of delay has been rejected. The reasons are mentioned in paragraph No.4 of the order dated 12.10.2023 are subsequently upheld by the learned Court in the order passed in Review.

5. Learned Advocate for the Petitioner / Defendant has invoked the provisions of Order XXXVII, Rule 3, Sub Rule 7 of the Code of Civil Procedure, 1908 (for short “CPC”) and has drawn my attention to the Application filed below Exhibit “15” which is appended at Exhibit “B” - page No.19 of the Writ Petition and would submit that as stated therein the Defendant is a lady who is the sole proprietor of Defendant firm and as stated in the Application, due to family dispute between herself and her husband, she had to visit her matrimonial home at village Vaijnath Parli and therefore within the stipulated time she could not consult her Advocate and provide the relevant papers resultantly leading to the delay.

6. The aforementioned reason has been vehemently objected to by the Plaintiff as not being a sufficient ground and cause to invoke the provisions of Order XXXVII Rule 3(7) of the CPC. The fact as to

whether the cause of action can be considered to be a negligent act or otherwise is the subject matter of consideration in the present case.

7. The learned Court has given its opinion in paragraph No.6 merely on the reasons stated in paragraph No.4 about the Defendant required to remain vigilant. *Prima facie*, after reading the Application of the Defendant below Exhibit “15” and the reasons contained therein, an arguable case has been made out by Mr. Pawar for issuance of notice.

8. Hence, issue notice to the Respondent. Humdast permitted.

9. In addition to Court notice, Petitioner is permitted to serve a copy of the Writ Petition and this order on the Respondent and inform it about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

10. After receiving notice, Respondent is directed to file Affidavit-in-Reply on or before the next date, if so desired.

11. It is clarified that, this Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself after hearing the parties.

12. Respondent is directed to remain present in Court on the next adjourned date either by themselves or through Advocate.

13. I am informed by the Advocate for Petitioner that the learned Trial Court is seized with the hearing of the Summary Suit and the next date is 01.07.2024. In view of the present Writ Petition being filed, learned Trial Court is requested by this Court to defer the hearing in Summary Suit on 01.07.2024 to a future until the determination of the present Writ Petition.

14. On the next adjourned date, if Respondent does not remain present despite having been served, this Court shall not await the presence of the Respondent and shall proceed with the hearing of the Writ Petition strictly in accordance with law and determine the same after hearing the Petitioner.

15. Stand over to 12th July, 2024.

[MILIND N. JADHAV, J.]

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signed by AJAY
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