

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 13115 of 2024

M/s. Esquire Polymers Limited ... Petitioner.

V/s.

Shri Vitthal Maruti Sakhare and ors. ... Respondents.

Mr. Sohan Gunjal i/b. Mr. Ojas Deolankar	Advocate for the Petitioner
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CORAM : S.M. MODAK, J

DATE : 14 October 2024.

P.C. :

Heard learned Advocate for the Petitioner-Plaintiff.

2. There is a suit for permanent injunction filed in the Court of Civil Judge Senior Division, Pune. There are four defendants. There is written-statement cum counter claim filed by defendant No.1 on 13 January 2012 and defendant 4 on 3 February 2012. It was filed in a suit for permanent injunction. Counter claim mentions about injunctioning the plaintiff from disturbing the possession of defendant No.1 and 4 without following due process of law.

3. The present Petitioner has not filed written-statement to this counter claim of defendant No.1. After a gap of almost 8 and more years, he has filed an application for condoning the delay caused in

filing the written-statement. This was allowed by the trial Court as per the order dated 3 February 2023. Cost of Rs. 5000/- was imposed. The trial Court heard learned Advocates for both defendant No.1 and defendant No.4. However, the order is restricted to defendant No.1 only (not clear whether it pertains to counter claim for written-statement of defendant no.4). In spite of this liberty, plaintiff failed to comply with the order within 15 days. That is what the trial Court recorded in the order dated 1 April 2023. Cost was not paid till 27 February 2023. That is why again the trial Court directed to proceed the counter claim without written-statement of the plaintiff. That is how on 26 June 2023, plaintiff filed an application to set aside no written-statement order (to counter claim). The trial Court rejected it on 22 November 2023 (Page-74). That is why present writ petition.

4. Respondent Nos. 1 to 4 are served. In spite of the notice all of them have not appeared. I am inclined to allow the prayer of the plaintiff for the reason stated in the writ petition subject to enhancement of the cost. It is true the plaintiff has failed to file written-statement within time given and thereafter also. Trial Court was right in rejecting the prayer. But this Court can certainly accept the prayer for permitting to file written-statement for the reasons stated in the application. Overall I find the plaintiff's approach as casual. When query is put to their advocate, he has no answer to written-statement filed by defendant No.4. Hence, this order is restricted to

written-statement to counter claim of defendant No.1 only. Hence, following order is passed.

ORDER

- (i) Writ Petition is allowed.
 - (ii) The order dated 22 November 2023 passed by the Court of 2nd Civil Judge Senior Division, Pune in RCS No.1653/2011 is set aside.
 - (iii) The Plaintiff is directed to deposit the cost of Rs.20,000/- (which includes the original cost of Rs.5000/-) within two weeks from today. Once the amount is deposited, it be paid to defendant No.1.
5. It is made clear that written-statement, if not filed earlier, the written-statement has to be filed within two weeks.
6. If both these conditions are not complied with, the counter claim to proceed without written-statement.

(S.M. MODAK, J.)