

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13947 OF 2024

M/s. Newshawk Multimedia Pvt. Ltd.

....*Petitioner*

: Versus :

Sanjay Madhukar Yadav

....*Respondent*

Mr. Javed A. Khan, *for the Petitioner.*

Mr. Dnyaneshwar B. Kale, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 24 October 2024.

P.C. :

1) The petition is filed challenging orders dated 13 September 2024 passed by the Learned Judge of the Small Causes Court at Mumbai on applications at Exhibits-42 and 43 for condonation of delay in filing Written Statement and for setting aside 'No Written Statement' order dated 26 April 2023.

2) The suit is of the year 2021. Respondent-Defendant was served with the suit summons on 6 September 2021. It appears that instead of filing Written Statement, Respondent was advised to file application for rejection of plaint under the provisions of Order 7 Rule 11 of Civil Procedure Code on 24 October 2023. The said application was rejected on 1 November 2023. It appears that there was also litigation between the parties on the issue of appointment of Court

Commissioner for inspecting the suit premises and the matter travelled till the Appellate Bench of the Small Causes Court at the instance of the Petitioner-Plaintiff.

3) No doubt, the Respondent-Defendant is negligent in defending the suit. It is pointed out by the learned counsel appearing for the Petitioner-Plaintiff that the evidence on behalf of the Plaintiff is already closed and the suit is slated for final arguments. Considering the stage at which the suit stands today, though the Small Causes Court ought to have allowed the applications for condonation of delay and for setting aside '*No Written Statement*' order, it ought to have imposed exemplary cost on the Defendant considering the acts of his negligence. I am not inclined to interfere in the impugned orders dated 13 September 2024 since non-filing of Written Statement by a Defendant in a suit results in drastic consequences. However, at the same time, negligent Defendant in the present case is required to be mulct with exemplary costs as the entire clock of the suit is required to be set back on account of filing of Written Statement at such a belated stage.

4) At this stage, the learned counsel appearing for the Petitioner-Plaintiff would point out that though an order has been passed by the Appellate Bench of the Small Causes Court for grant of inspection of the suit premises on 5 September 2022, the inspection has not taken place on account of non-cooperation on the part of the Defendant. The learned counsel appearing for the Defendant would dispute this position. Be that as it may. A date can be fixed when inspection of the suit premises can be conducted by the Architect of

the Plaintiff and grievance of the Plaintiff in that regard would be redressed .

5) I accordingly proceed to pass the following order :

(i) Orders dated 13 September 2024 allowing applications at Exhibits-42 and 43 are not disturbed. However, for negligent conduct, Defendant shall pay to the Plaintiff, additional costs of Rs.25,000/- over and above the one already imposed by the Small Causes Court. It is made clear that payment of costs to the Plaintiff is condition precedent for taking the Written Statement on record.

(ii) The Plaintiff is permitted to conduct inspection of the suit premises through Architect as directed by the Appellate Bench of the Small Causes Court on 7 November 2024 at 4.00 p.m.

(iii) Considering the fact that the entire clock of the suit is being set back by granting permission to the Defendant to file Written Statement, hearing of the suit is expedited and the Small Causes Court shall make an endeavour to decide the same as expeditiously as possible.

6) With the above directions the Writ Petition is **disposed of**.

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[SANDEEP V. MARNE, J.]