

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13901 OF 2023

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VISHAL SUBHASH
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Ramchandra Nana Hajare and Another ...Petitioners

vs.

Balkrishna Nana Hajare ...Respondent

Mr. Kalpesh Patil, for the Petitioner.

Mr. B.A. Shaikh a/w. Mr. Soni Jayswal, Mr. Rajabhau Chaudhari and
Ms. Shweta Hajare, for Respondent.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 27, 2025

P.C:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 5th October, 2023 whereby an application preferred by defendant Nos. 1 and 2 to condone the delay of about 44 days in filing the written statement came to be rejected.
3. The respondent/ plaintiff is the brother of petitioners/ defendant Nos. 1 and 2. The respondent has instituted a suit for compensation for the damage caused by the defendants by allegedly unlawfully restraining the respondent from cutting and transporting the sugarcane to the sugar factory from the suit land.
4. The summons was served on the defendants on 23rd March, 2023. Adjournments were sought to file the written statement. On 14th June, 2023, the learned Civil Judge extended time to file the

written statement till 20th June, 2023, by way of last chance. The defendants failed to file the written statement within the stipulated period. On 7th August, 2023 the defendants filed an application seeking permission to file the written statement.

5. The plaintiff opposed the said application and also filed an application to forfeit the right of the defendant to file the written statement. By the impugned order, the application came to be rejected on the ground that the defendants failed to ascribe a satisfactory reason for the delay.

6. Mr. Patil, the learned counsel for the petitioners, would urge that the petitioners were not aware that on 14th June, 2023 time to file the written statement was extended only till 20th June, 2023 as the online Roznama of the proceeding, a copy of which was tendered for the perusal of the Court, indicated that the suit was stood over to 11th July, 2023. It was submitted that the delay was not intentional. The defendants being the agriculturist and illiterate persons were required to collect the documents and, thereafter, file the written statement.

7. Mr. Shaikh, the learned counsel for the respondent/ plaintiff, strongly opposed the petition. It was submitted that the defendants had filed a number of applications seeking time to file the written statement, on one or the other pretext. It can not be said that an

effective opportunity was not given to the defendants. Since the plaintiff has been suffering huge loss on account of the hostile conduct of the defendants and also dilatory tactics, the defendants do not deserve a lenient view.

8. It is true though the provisions contained in Order VIII Rule 1 has been construed to the directory, yet, the legislative object in stipulating a time frame for filing the written statement cannot be totally lost sight of. The defendants are required to satisfactorily account for the delay in filing the written statement. In the case at hand, it appears that the defendants appeared and sought adjournments to file the written statements. On 14th June, 2023, the learned Civil Judge extended the time till 20th June, 2023, purportedly the 90th day from the date of the service of the written statement. The online Roznama of the proceeding, however, does not reflect the said fact. Nonetheless, it can not be disputed that there was delay and indolence on the part of the defendants. The relationship between the parties and the attendant circumstances, however, deserve to be taken into account.

9. Evidently, the defendants are agriculturist. The reasons ascribed in the application for condonation of delay can not be said to be wholly unsustainable. The period of delay also cannot be said to be inordinate. In these circumstances, it would be expedient in

the interest of justice to permit the defendants to file the written statement. The delay and inconvenience caused to the plaintiff can be redressed by imposing costs.

Hence, the following order.

ORDER

- 1} The petition stands allowed.
- 2} The impugned order dated 5th October, 2023 stands quashed and set aside.
- 3} The defendants are permitted to file the written statements subject to payment of costs of Rs. 25,000/- to the plaintiff, within a period of three weeks from the date of uploading of this order.

Petition disposed.

(N. J. JAMADAR, J.)