

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6816 OF 2023

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Raghunath Digambar Gadhave and anr. ...Petitioners

Versus

Nagnath Hanmant Lavte and ors. ...Respondents

Ms. Manisha Devkar, a/w Siddhi Patil, for the Petitioners.

Ms. Shraddha Pawar, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED: 15th APRIL, 2025

PC:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 14th October, 2022, whereby the learned Civil Judge, Junior Division, Pandharpur, has permitted defendant Nos.6(a) to 6(e) and 7 to 9 to file written statement and counter-claim, beyond the stipulated period.
3. The summons was served on the defendants in the year 2018. The said application came to be filed in the year 2022.
4. The learned Civil Judge was persuaded to allow the application by passing the order, which reads as under:

“Order:

Heard Ld. Adv. For the defendant and plaintiff. Perused the record. Hence in view of the facts and circumstances of the case, permission as sought is granted in the interest of justice.”

5. Evidently, the learned Civil Judge has not adverted to the provisions contained in Order VIII Rule 1 of the Code of Civil Procedure, 1908 and the interdict contained therein. Undoubtedly, the provision is directory. However, the learned Civil Judge was required to apply mind to the facts of the case and record reasons that the defendants were presented by a sufficient cause from filing the written statement within the stipulated period.

6. A useful reference in this context can be made to a decision of the Supreme Court in the case of *R. N. Jodi & Brothers and others vs. Subhashchandra*¹ to the effect that it is necessary to emphasise that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the Court being conscious of the fact that even the power of the Court for extension inhering in Section 148 of the Code, has also been restricted by the legislature.

7. Since the order is sans reason, the order cannot be sustained. The petition is, therefore, required to be partly allowed.

1 (2007) 6 SCC 420.

8. The order passed by the learned Civil Judge on the application (Exhibit-99) stands quashed and set aside.

9. The application stands restored to the file of the learned Civil Judge, Pandharpur.

10. The learned Civil Judge shall hear the application afresh after providing an opportunity to the petitioners to file reply thereto, and hearing the parties, as expeditiously as possible.

11. By way of abundant caution, it is clarified that the learned Civil Judge shall decide the application on its own merits and in accordance with law without being influenced by the observations made hereinabove as they are confined to determine the legality, propriety and correctness of the impugned order.

12. The petition stands disposed.

[N. J. JAMADAR, J.]