

MHSCA10008512022



Presented on : 30.09.2022

Registered on : 20.10.2022

Decided on : 05.07.2023

Duration : 0 years, 9 months, 5 days

Exhibit :

IN THE COURT OF SMALL CAUSES AT BOMBAY
(APPELLATE BENCH)

REVISION APPLICATION NO. 285 OF 2022

IN

EXHIBIT NO. 25

IN

R.A.D. SUIT NO. 567 OF 2018

1. M/s. Dakhibai Singhania Dharamshala Trust,
Having its office at Singhaniawadi, (Ganesh
Baug), 187, Dadi Seth Agyari Lane, Chira
Bazar, Mumbai – 400 002

2. Mrs. Laxmi Devi Gopi Kumar Singhania,

Aged about 72 years, Occupation : Business,
Residing at 16, Goenka House, Ground Floor,
Walkeshwar Road, Mumbai – 400 006.

3. Mr. Shharad Chandra Gopi Kumar Singhania
Aged about 51 years, Occupation : Business,
Residing at 12, Bhagawandas Apartments,
Worli Sea-face, Mumbai – 400 030

4. Mr. Amit Gopi Kumar Singhania
Aged about 51 years, Occupation : Business,
Residing at 16, Goenka House, Ground Floor,
Walkeshwar Road, Mumbai – 400 006

***....Applicants/
Orig. Defendant
Nos. 1 to 4***

Versus

1. Kirit Becharbhai Patel,
Age about 43 years, Occupation : Service,
Residing at Singhaniawadi. Ganesh Baug, First
Floor, Room No. 14 & 15, 187, Dadi Seth
Agyari Lane, Chira Bazar, Mumbai – 400 002

***....Respondent
No.1/ Org.
Plaintiff***

And

2. Mr. Lav Kumar Gopi Kumar Singhania,
Age about 49 years, Occupation- Not known,
Residing at 16, Gonenka House, Ground Floor,
Walkeshwar Road, Mumbai – 400 006

***... Proforma
Respondent No.2/
Orig. Deft. No.5***

Appearance :-

Mr. Rajesh K. Thakur, Ld. Advocate for Applicants.
Ex-parte against Respondent No.1

**Coram : Shrikant L. Anekar, Chief Judge
And
P. R. Navale, Judge,
Court Room No.1,
Date: 05.07.2023**

Judgment : (Per P. R. Navale, Judge) :-

1. This present Revision Petition is directed against the order passed below Exhibit – 25 in R.A.D. Suit No. 567 of 2018 dated 26.08.2022 by the learned Judge presiding over Court Room No. 20 of the Court of Small Causes. *(The parties are hereinafter referred to as per their original nomenclature before the trial court).*

2. **Facts which gave rise to present Revision Application can be summarized as under:**

3. The plaintiff has filed the suit for declaration of his tenancy rights in respect of Room No.14 on the ground floor & Room No.15 on the first floor, in Singhaniawadi, 187, Dadi Seth Agyari Lane, Ganesh Baug, Chira Bazar, Mumbai – 400 002. Defendant No.1 is Public Charitable Trust whereas defendant Nos. 2 to 4 are managing trustees of the said trust and defendant No.5 is Power of Attorney Holder of other defendants. As it appears from record that suit summons were duly served upon all the defendants on different dates i.e. 15.07.2019, 12.07.2019 and 19.07.2019 through bailiff of the Court. However, none of the defendants were appeared in the suit to file the written statement. Therefore, the learned Trial Court passed the order below Exhibit – 1 on 20.11.2019 to proceed *ex-parte* against all the defendants. Later on amendment was carried out in the plaint and amended plaint was served upon one of the defendants. However, defendant Nos. 1 to 4 appeared in the matter through their advocate on filed their written statement. On 21.12.2021 by order passed in the

Roznama, the matter was adjourned for 'no written statement' against defendant No.2. Therefore, defendant Nos. 1 to 4 through their Advocate sought to set aside the said order by filing the application below Exhibit 25 and also prayed to take on record the written statement earlier filed by them.

4. The application was resisted by the plaintiff by filing reply on the said application. Upon hearing both the sides, the learned Trial Court observed that earlier defendant Nos. 1 to 5 were served with the suit. However, they failed to appear and suit was proceeded *ex-parte* against them. It was further observed that after carrying out the amendment in the plaint on 14.02.2020, defendant No.1 was served on 17.03.2020 through bailiff of the Court. Therefore, defendant No.1 was required to file the written statement till 16.04.2020 but he failed to do so. Therefore, by the impugned order, the learned Trial Court rejected the prayer of the defendants to take on record the written statement earlier filed by them on 23.09.2021 and also ordered that the case is taken for 'No written statement order against defendant No.1' on 26.08.2022.

5. Being aggrieved, the defendants have filed this Revision Application on the ground mentioned in the Memo of Revision. To assess the matter in proper perspective, we have called for record and proceeding of learned trial Court.

6. Though the respondent/ original plaintiff was served, he did not appear to contest the Revision Application. We have heard

learned Advocate appearing on behalf of applicants. Following points arise for our determination. We have recorded our findings against each of them for the reasons to follow:-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the impugned order passed below Exhibit 25 dated 26.08.2022 is just, legal and proper?	No.
2.	What order ?	As per final order.

: REASONS :

AS TO POINT NOS. 1 AND 2 :-

7. Upon scrutinizing record and proceeding of the suit, it is seen that though ex-parte order was passed against all the defendants on 20.11.2019, the plaintiff had moved an application below Exhibit – 19, seeking amendment in the plaint on 18.09.2019. Say of the defendants was called on the said application. However, subsequently, on 20.11.2019 the order was passed thereon that no reply filed by the defendants though they are served with summons and the matter was kept for argument on the said application. Interestingly, on the same date, ex-parte order against the defendant was passed below Exhibit 1. Subsequently, on 06.01.2020, amendment application below Exhibit – 19 was allowed by the Court and the plaintiff was directed to carry out amendment as per schedule within 14 days of the said order. Thereafter,

the plaintiffs carried out the amendment in the plaint on 14.02.2020. After said amendment, fresh suit summons were issued to all the defendants. As per the record, only defendant No.1 was served with the suit summons of amended plaint on 17.03.2020. Thereafter, there was no progress in the matter till July – 2021 due to restrictions of Covid19 and the matter was adjourned from time to time for service of the amended plaint on other defendants.

8. On 26.07.2021, the learned advocate for the defendants appeared before the Court and filed application below Exhibit – 23 for taking the matter on board. Upon permission, the learned Advocate filed his Vakalatnama for defendant Nos.1 to 4 at Exhibit – 24 and the matter was adjourned to appointed date i.e. 25.08.2021. On that date, the matter was adjourned for alias (fees for service of summons) to defendant No.5 and Written Statement for defendant Nos. 1 to 4 and also for reply of defendants to Exhibit – 9. On 23.09.2021, the matter was shown to be adjourned for *ex-parte* order against defendant No.1 and written statement, as per Roznama. Thereafter, on 01.12.2021, the matter was adjourned for hearing both the Advocates. On 21.12.2021, the matter was adjourned for ‘no written statement order against defendant No.2’. On subsequent dates i.e. on 07.01.2022, an application was moved by defendant Nos. 1 to 4 below Exhibit – 25 for setting aside the order dated 21.12.2021. In the said application, it was contended that the amended plaint was served to the defendant Nos. 1 to 4 on 25.08.2021 as they waived the service of the amended plaint. Thereafter, on 23.09.2021, they had filed the written statement before the court within 30 days from the date of service of the amended plaint.

9. In the light of the factual matrix of the matter, we have examined the material placed before us. Admittedly, as per the first order dated 20.11.2019, the matter was proceeded ex-parte against all the defendants. However, prior to that the plaintiff had filed an application below Exhibit – 19, seeking amendment in the plaint. Said application was allowed by the court on 06.01.2020. Resultantly, the amendment was carried out by the plaintiff on 14.02.2020. Admittedly, the suit summons of the amended plaint was served on defendant No.1 only on 17.03.2020.

10. Here, it is to be noted that due to outbreak of Covid-19, physical functioning of the Court was restricted by virtue of various orders and circulars issued by the Central Government/ State Government. The effect of Covid-19 continued till August – 2021. The Hon'ble Apex Court also took cognizance of the pandemic situation and issued guidelines in *suo motu* Writ Petition (Civil) No.3 of 2020 regarding the extension of period of limitation for the purpose of proceedings to be filed in the Court throughout the country. By last order dated 10.01.2022, the Hon'ble Apex Court pleased to extend the period of limitation w.e.f. 15.03.2020 to 28.02.2022.

11. In this context, as it appears from the record, defendant Nos.1 to 4 had appeared before the learned Trial Court on 26.07.2021. There is an endorsement on the plaint dated 25.08.2021 showing the receipt of copies of amended plaint by the Advocate for defendant Nos. 1 to 4. On the very next date, i.e. on 23.9.2023, the written statement of defendant Nos. 1 to 4 alongwith Memo of Address and list of

documents was produced before the learned Trial Court. Said fact is also reflected from the impugned order, particularly, in paragraph No.6 thereof.

12. Surprisingly, the said written statement dated 23.09.2021 was neither taken on record by the Court nor any order was passed on the said date. It is just found to be kept in the record of the suit without having any order/endorsement of the Court. On the contrary, it appears from the subsequent Roznamas that the matter was adjourned for hearing about written statement taking on record. On 21.12.2021, after hearing the Advocates for both the sides, the matter was adjourned for 'No written statement order against defendant No.2'.

13. In fact, the suit summons of amended plaint was served upon defendant No.1 on 17.03.2020. However, it appears that for no good reasons, on 21.12.2021 the matter was adjourned for 'No written statement order against defendant No.2' who had *suo motu* appeared before the Court through his Advocate on 26.7.2021 and had filed written statement on 23.9.2021. It is pertinent to note that though suit summons of amended plaint was served upon defendant No.1 on 17.03.2020, thereafter, due to outbreak of Covid-19, physical functioning of the Court was restricted. In this view of the matter, the appearance of all the defendant Nos. 1 to 4 through their Advocate on 26.07.2021 itself shows that they were vigilant about the matter and they appeared in the Court at the earliest possible time that too during the continuance of the order of extension of limitation by the Hon'ble Apex Court from time to time.

14. On 23.09.2021, defendant Nos. 1 to 4 had filed their written statement alongwith Memo of Address and list of documents. In our considered opinion, in such peculiar facts of the case, there was no reason for the learned Trial Court to refuse the written statement filed by defendant Nos. 1 to 4 on 23.09.2021. The learned Trial Court ought have taken into consideration the peculiar facts of the case especially the restrictions on the court for physical functioning during the outbreak of Covid-19. Therefore, the impugned order cannot be said to be just, legal and proper and liable to be set aside. As a result of this discussion, the Revision Application deserves to be allowed. **Hence, we answer Point No. 1 in the negative and pass the following order in answer to point No. 2 :-**

ORDER

1. The Revision Application No. 285 of 2022 is hereby allowed.
2. The impugned order dated 26.08.2022 passed by the learned Trial Court below Application (Exhibit – 25) in R.A.D. Suit No.567 of 2018 is hereby set aside.
3. Application (Exh. 25) filed in the suit is hereby allowed.
4. The written statement filed by defendant Nos. 1 to 4 dated 23.09.2021 be taken on record accordingly.
5. Inform the learned Trial Court accordingly.
6. Record and proceeding be returned to the Learned

Trial Court.

Date : 05.07.2023

I agree,

[Shrikant L. Anekar]
Chief Judge
C. R. No.1

[P R. Navale]
Judge
C. R. No.1

Judgment dictated on : 05.07.2023
Judgment typed on : 07.07.2023
Judgment checked and signed on : 10.07.2023