

CNR NO. MHCO010002972023

Dispute No. 235/2023

Deepak Jagdish Tejale

Vs

Mini Johnson & another

ORDER BELOW EXH-13

1. By way of present application, opponent no.2 is seeking for condonation of delay to file its written statement.

2. Opponent Nos.2 submitted that it received summons on 20th May 2023. On 1st July 2023, opponent Nos.2 appeared in the present matter through its learned advocate. The opponent society is presently going through redevelopment process. Society's committee members terminated earlier developer. Hence, present dispute is filed on behalf of developer to harass the society.

3. Further, to file written statement, some of the members had gone to their native place and some were not keeping well. Hence, the same caused delay of 92 days to file written statement. Delay caused is not intentional. If the present application is allowed, no harm will cause to disputant. Hence, present application be allowed and permission be granted to file written statement.

4. Disputant opposed present application by filing his reply vide exh.15. On 1st May 2023 summons were served upon opponent Nos.2. The present matter was listed on 1st July 2023. On the said date opponent Nos.2 appeared through its learned advocate and

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sought time to file written statement. Accordingly, matter was adjourned to 29th September 2023 for filing of written statement. But even on said date no written statements was filed by the opponents. Opponents failed to file written statement even on 24th November 2023. Hence, on 19th January 2023 a written statement order was passed against the opponents.

5. Adequate opportunities were given to the opponents to file written statement. But they failed to do so. Opponent No.2 has failed to mention details of when period of filing of written statement began and when it lapsed. Opponent neither explained reason for not filing written statement nor specified delay of each day to file written statement. Only to delay present proceeding, opponent is deliberately prolonging the matter. Hence, considering these factors, present application be rejected with costs.

6. Heard both the sides and perused the record. The present dispute is filed to challenge election held in February 2023. As per service affidavit vide exh.6, summons were served upon opponent No.2 on **01/05/2023**. As per **Order VIII Rule 1 of the Code of Civil Procedure**, the defendant shall within 30 days, from the date of service of summons on it, present written statement of its defence. If it fails to do so, the said written statement shall not be filed later than 90 days from the date of service of summons. In the present

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case, the period of 90 days has lapsed on **01/08/2023** for opponent No.2. Thereafter, on **19/01/2024** present application was made.

7. In support of his case, disputant relied on following decisions given by the Hon'ble Apex Courts. They are as follows:

- i. **Sudhirkumar Krishnalal Sahani Vs Nagar Parishad/Nagar Palika/Municipal Council, Hinganghat and another, 2009 (6) Mh.L.J.**
- ii. **Atcom Technologies Limited Vs Y.A. Chunawala and Company and others, (2018) 6 Supreme Court Cases 639.**
- iii. **Pukhrem Saratchandra Singh Vs Mairembam Prithviraj, (2015) 16 Supreme Court Cases 149.**

8. I perused aforementioned judgments. The present application differs from the case of **Sudhirkumar Krishnalal Sahani Vs Nagar Parishad/Nagar Palika/Municipal Council, Hinganghat and another, 2009 (6) Mh.L.J.**, on the grounds of stage of matter and number of adjournments sought. Further, present case differs from cases of **Atcom Technologies Limited Vs Y.A. Chunawala and Company and others, (2018) 6 Supreme Court Cases 639** and **Pukhrem Saratchandra Singh Vs Mairembam Prithviraj, (2015) 16 Supreme Court Cases 149,** on the grounds of period of

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delay and nature of dispute. Hence, for the reasons mentioned above, cases cited supra are not being taken into consideration.

9. Proceeding further. In view of aforementioned time period, reasons given by opponent do not sound justified to me. But, considering the nature of present dispute application, to decide the same on merit, one final opportunity needs to be given to opponent. Hence, considering the principles of natural justice and in the light of provision of **section 148** of **the Code of Civil Procedure**, I proceed to pass the following order-

ORDER:

1. Application is allowed by condoning the delay, subject to costs of **Rs. 2,500/- (Rs.Two Thousand Five Hundred)** to be paid to the disputant on or before next date, in the present dispute, without fail.
2. Thereafter, opponent No.2 to file its written statement, if any, on the next date in the present dispute, without fail.

Sd/-

Place: Mumbai

Date: 04/07/2024

(Prachi N. Gosavi)

Judge, Co-operative Court No.4.