

**Ej. Suit No. 153 of 2013**

Order No. 21

28.08.2015

Today is fixed for hearing of petitions preferred by the defendant on 29.03.2014 u/s 5 of Limitation Act, u/s 7(1) of W.B.P.T. Act, 1997 and u/s 7(2) of W.B.P.T. Act, 1997.

Both parties filed hazira through their respective Ld. Advocates.

Record is taken up first for hearing of the petition preferred u/s 5 of Limitation Act.

In the subject application dated 29.03.2014, the defendants stated to have received the knowledge about this suit only a week prior to the said date from reliable source and they did not receive the summons of this suit personally. As such, they have not been able to take steps for filing written statement and other applications.

It has further been mentioned that the aforesaid cause shown by them was beyond their control and they may be allowed to file the application u/s 7(1) of W.B.P.T. Act, 1997 by accepting the said cause shown.

The defendants also contended that if they are not allowed to file the 7(1) application, they would be suffering from irreparable loss and damage.

On the basis of said averments, the defendants by way of this application prayed for permission to submit petition u/s 7(1) of W.B.P.T. Act, 1997.

At the time of hearing Ld. Advocate for the defendants reiterated the contents of the subject application.

Copy served on the other side. No written objection submitted on behalf of the plaintiffs.

However, on call, Ld. Advocate for the plaintiffs raised vehement verbal objection against the instant prayer.

Considered the submissions made by Ld. Advocates for both sides and perused the materials on record.

It is a matter of record that summons sent through the Summons Bailiff of this Court was served on defendant no.-3 personally on 07.06.2013 and on the son of defendant no.-1 on the same date, which is also a valid service.

In view of the said S/Rs, it can be safely concluded that the defendants duly received the summons of this suit on 07.06.2013. Accordingly the averment made in the subject application to the effect of non receipt of the summons is absolutely false.

It is found further that the 7(1) & 7(2) applications were preferred on 29.03.2014.

Considering the date of summons (07.06.2013), the applications were statutorily required to be filed by 06.07.2013. Thus, there was a delay of about 09 months in filing the applications.

However, the application u/s 5 of Limitation Act is silent about the grounds of such delay. No reason has been cited by the defendants to sufficiently explained the cause of such delay. Moreover, the petition is also not supported by an affidavit. The defendants also did not bother to reveal the "reliable source" from which they came to learn about this suit.

Due to vagueness, falsity and for want of any sufficient cause, I am not inclined to condone the delay as prayed for.

Hence, it is,

ORDERED,

that the petition preferred by the defendants on 29.03.2014 u/s 5 of Limitation Act stands rejected on contest without any order as to cost.

Dictated and corrected by me:

*Judge*

*Judge, 3rd Bench.*