

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO.2557 OF 2023
IN
SUIT NO.68 OF 2016

Naraindas Parmanand Trust Buildings
Presidents Welfare Society ... Applicant (Org. Def. No.6)

In the matter between:

Naraindas Parmanand Sanatorium Trust ... Plaintiff

Vs.

Aakar Enterprises and others ... Defendants

WITH
INTERIM APPLICATION (L) No.2789 OF 2023
WITH
INTERIM APPLICATION (L) NO.8639 OF 2023
IN
SUIT NO.68 OF 2016

Mr. Vyom Shah a/w. Ms. Shreema Doshi and Mr. Mohammed Ashraf i/b. Lexicon Law Partners for Plaintiff.

Mr. Jehan Mehta a/w. Ms. Ruchi Gandhi and Mr. Yazad Udwadia i/b. D M Legal Associates for Defendant Nos.1 to 5.

Mr. Vijay Kurle a/w. Mr. Samkit Shah for Defendant No.6.

CORAM : MANISH PITALE, J.

DATE : JUNE 08, 2023

P.C. :

Interim Application (L) No.2789 of 2023 in Suit No.68 of 2016

This was an application for condonation of delay in filing the written statement, placed on behalf of defendant Nos.1 to 5. This Court is informed that the said application stood disposed of by an order dated 20.03.2023, whereby delay in filing written statement was condoned subject to payment of costs. This Court is informed that the cost was paid and the written statement is already filed. Therefore, it is found that the said application i.e. Interim Application (L) No.2789 of 2023 is

wrongly listed before this Court.

Interim Application (L) No.8639 of 2023 in Suit No.68 of 2016

This application is filed by defendant No.6 for condonation of delay in filing written statement and for setting aside an order dated 22.06.2017, whereby the suit was transferred to the list of undefended suits insofar as the said defendant is concerned.

2. It is stated in the application that the applicant i.e. defendant No.6 is not taking an adversarial stand in the matter and on the contrary, the said defendant is of the opinion that the plaintiff has not properly pursued the present proceedings. It is stated that in the light of the aforesaid circumstances, defendant No.6 could not file its written statement. It is also brought to the notice of this Court that a similar application filed on behalf of defendant Nos.1 to 5 was allowed by an order dated 20.03.2023, and delay was condoned in filing written statement by the said defendants, subject to payment of costs. The order dated 22.06.2017, insofar as the said defendants are concerned, was also set aside.

3. Learned counsel appearing for the plaintiff submits that in the present application, certain statements and allegations are made against the plaintiff, which are denied.

4. This Court has considered the present application. The record shows that there is huge delay on the part of the said defendant in making an attempt to file written statement. The order transferring the suit to the list of undefended suits insofar as the applicant / defendant No.6 is concerned, was passed as far back as on 22.06.2017. Considering these facts, although this Court is inclined to allow the prayer made in the present application, in the interest of justice, the applicant needs to be put to terms while accepting the prayer made in

the application.

5. In view of the above, the application is allowed and the delay in filing the written statement is condoned subject to the applicant / defendant No.6 making payment of costs of Rs.25,000/- in favour of “The Vatsalya Foundation”, Ground Floor, King George V. Memorial, Dr. E. Moses Road, Mahalaxmi (West), Mumbai 400 011. The order dated 22.06.2017 passed by the Prothonotary and Senior Master of this Court, insofar as the applicant / defendant No.6 is concerned, is set aside. Consequently, the applicant / defendant No.6 shall now place its written statement on record within two weeks from today.

6. Interim Application (L) No.8639 of 2023 stands disposed of.

Interim Application (L) No.2557 of 2023 in Suit No.68 of 2016

. By this application, defendant No.6 is seeking to be transposed as plaintiff No.2. The plaintiff as well as defendant Nos.1 to 5 have filed reply affidavits and they are opposing the prayers made in the present application.

2. Although the reply affidavit of the plaintiff is found in the papers, the reply affidavit of defendant Nos.1 to 5 is not traceable.

3. The Registry to ensure that, on the next date of listing, the said reply affidavit is placed along with the papers.

4. List the application for further consideration on 07.07.2023.

(MANISH PITALE, J.)

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