



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.365 OF 2023

Amnre Deep Sing Judge
Thr POA Devendra Singh

... Petitioner

Versus

Bonifacio Fernandes And Anr.

.. Respondents.

Mr. Anoop Gaonkar, Advocate for Petitioner.

Mr. John A. Lobo, Advocate for Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

Reserved on: 24th August 2026

Pronounced on: 28th August 2026.

ORDER:

1. The Petitioner/original Defendant No.1 impugns Order dated 07.02.2023 passed by Learned Civil Judge Junior Division 'F' Court at Margao, Exhibit D-33 thereby refusing to condone delay of 5 years 5 months caused in failing the written statement in Regular Civil Suit No.367/2015/E/F.

2. The Respondent No.1/original Plaintiff instituted Suit for perpetual injunction and consequential reliefs against the Petitioner and Respondent No.2. On 10.12.2015, the Petitioner appeared in suit through his Advocate. From 18.08.2016, Petitioner's Advocate made request for condoning delay in filing written statement. However, ultimately, the written statement was not filed. In the year 2022, the Petitioner's Advocate expired. On 02.08.2022, the Petitioner filed application seeking condonation of delay and permission for filing written statement in Exhibit D-33. The trial Court declined to entertain the application observing that Petitioner, was not pursuing the matter, at his personal level shows that he was negligent and not diligent and no sufficient cause is made out to condone inordinate delay.

3. Mr. Anoop Gaonkar, Learned Advocate appearing for the Petitioner submits that Petitioner is a Non-Residential Indian. He had engaged Advocate Mr. J. B. Godinho to defend the Suit who assured to take necessary steps in the matter. The Petitioner has signed all papers as per his instructions and remained under bonafide belief that the suit has been contested on his behalf. Mr. Gaonkar would further point out that detailed reply was filed to temporary injunction application, incorporating all probable defences on behalf of the Petitioner. However, the Petitioner noticed non-filing of written statement, only when he

obtained copies of papers from Court record after demise of Advocate. The Petitioner was neither negligent nor he slept over right but suffered due to negligence of the Advocate his written statement could not be filed on record. In support of his contention, he relies on observations of The High Court of Judicature Bombay at Aurangabad in Writ Petition No.12117 of 2024 decided on 7th March 2026.

4. Per contra, Mr. John A. Lobo, Learned Advocate appearing for Plaintiff/Respondent No.1 vehemently opposes the application contending that suit is pending since 2015. Respondent No.2 was the Power of Attorney holder on behalf of the Petitioner. The Petitioner's Advocate consistently made applications for extension of time for filing written statement. In this backdrop, negligence on the part of Petitioner is apparent on face of record. The Trial Court has rightly refused to condone the delay by recording adequate reasons for such decision. Hence, no interference is required under Article 227 of Constitution of India.

5. Having considered submissions advanced by Learned Advocate appearing for respective parties, this Court finds that provisions of Order VIII Rule 1 of Code of Civil Procedure, 1908 are directory and not mandatory. It is true that time beyond 90 days of service of summons to

file written statement must be granted only on clear satisfaction of the justification for granting such extension. The Court has to be conscious of the fact that even power of the Court for extension inhering in Section 148 of the Code has also been restricted by the legislature. It would be necessary to make out an exceptional case to condone the delay and permit filing of delayed written statement. At the same time, the Court has to bear in mind that procedure is the handmaid of justice. The Court must be anxious to do justice and to prevent victories by way of technical knockouts.

6. Turning back to the facts of the present case, admittedly, Petitioner is a resident of United Kingdom. He was contesting the litigation through his Power of Attorney holder. Advocate Mr. J. P. Godinho was engaged on his behalf to defend. He had filed his Vakalatnama along with a copy of Attorney. Roznama indicate that detailed reply to the application for temporary injunction was filed incorporating plausible defences on behalf of Defendants. However, time was sought under the pretext that the matter can be settled between the parties. After initial attempt of settlement, request was made to grant time to file application to condone the delay in filing the written statement. Thereafter, Advocate Mr. J. P. Godinho represented to Court that he is willing to send withdrawal notice to the parties. Ultimately, in the year 2022, Advocate Mr. J. P. Godinho

expired. Thereafter, Petitioner collected papers and found that written statement was not filed on his behalf.

7. The suit is at the stage of evidence, however, trial is yet to commence. The failure on the part of the Petitioner to file written statements can be said to be accidental as a detailed reply was filed to temporary injunction application. Evidently, Petitioner had provided adequate instructions to his Advocate for filing written statement. A close scrutiny of Roznama depict that Petitioner's Advocate was mostly present before Court and he made applications for extension of time to file written statement. The Petitioner has filed an additional affidavit along with copies of WhatsApp chat with Advocate that shows that Petitioner was always in contact with his Advocate but he was never advised or informed as to filing of the written statement. The possibility that there was communication gap between Petitioner and his Advocate on the point of filing written statement cannot be ruled out. In this backdrop, explanation offered on behalf of the Petitioner for non-filing of written statement can be accepted. Inconvenience caused to the Respondent/Plaintiff can be compensated by awarding appropriate costs.

8. In this backdrop, this Court finds that impugned Order cannot be sustained in law particularly because it does not consider circumstances and reasons for delay made out by Petitioner.

9. In result, Writ Petition is allowed in terms of prayer clause (a) subject to condition that the Petitioner deposits the cost of Rs.25,000/- with Trial Court within a period of four weeks from today. Upon such deposit, the costs amount shall be paid to Respondent Plaintiff.

Prayer clause (a) reads thus:

“(a) For a writ of certiorari, order or direction in the nature of certiorari, calling for the records and proceedings of Regular Civil Suit No.367/2015/E on the file of Civil Judge Junior Division ‘F’ Court at Margao, Goa and upon perusing the propriety and legality of the Impugned Order dated 07/02/2023 passed by the learned Judge on the application dated 02/08/2022 filed by the Petitioner seeking condonation of delay in filing the written statement, at Exh. D-33, be pleased to quash and set aside the Impugned Order dated 07/02/2023 passed by the learned Judge and allowed the application dated 02/08/2022 at Exh. D-33.”

10. Writ Petition is disposed of.

S. G. CHAPALGAONKAR, J.