

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.808 of 2015

Kumari Tanuja Dattatraya Giri	...	Appellant
Vs.		
Komal D Giri & Ors.	...	Respondents

Amol Kharad, Adv. i/b. Pillai & Co. for appellant.
Faran M Khan, Adv. i/b. Sheela Mistry, Adv. for respondents.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 10th September, 2015.

P.C. :

1. Not on board. Upon production taken on board.
2. Rule. Made returnable forthwith.
3. The appellant has challenged the order dated 20th January, 2014 allowing the respondent to file their written statement in the suit. The suit was filed in 1990. The delay in filing written statement is stated to be 23 years. The Notice of Motion was taken out for allowing defendant No.3 to file written statement in the year 2014. It has been granted on the ground that the advocate who was on record, had appeared and was attending to the matter had been ill. The plaintiff would consider this reason to be unsatisfactory. Counsel on behalf of the plaintiff contends that every day's delay of the 23 years must be explained and the reason for the initial delay when there was the initial advocate is not stated. It is settled now that the concept of "every days delay" must be reasonably construed.

4. The learned Judge has accepted the application for condonation of delay so that the parties would be heard on merits upon the principle of natural justice. The suit is between the relatives. They would be heard on merits.

5. The appellant has relied upon the judgment of Justice Chauhan in Civil Appeal No.6974 of 2013 relating to sufficient cause. Indeed it is correct that sufficient cause must be shown but the sufficient cause of both the parties to prosecute the litigation and to defendant it must be seen together.

6. The fact remains that from 1990 the suit was filed. The plaintiff never applied for exparte decree and hence suit is remained on board. Thereafter when the defendant had to be heard, the plaintiff would contend that they cannot be heard. This is a anomalous position. Had the plaintiff applied for an exparte decree the decree would have been granted long years ago. That having not been done, the order to allow the defendants to be heard on merits cannot be faulted.

7. Thus seen the order is correct. The Appeal from Order is dismissed.

(ROSHAN DALVI, J.)

C E R T I F I C A T E

Certified to be true and correct copy of the original signed order.