

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.22002 OF 2015

Sayyed Mansoor Sayyed Ashraf Alias Mulla : Petitioner
versus
Smt. Kusum Shivram Shinde and ors. : Respondents.

Mr. A K Singh i/by Mr. Rajesh Kumar G Choudhari for the Petitioner.
Mr. Deepak Chitnis i/by Deepak Chitnis Chiparikar & Co. for the
Respondent No.3.

CORAM : R. M. SAVANT, J.
DATE : 03rd September 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 14/07/2015 passed by the learned Judge of the City Civil Court, Borivali Division at Dindoshi (Goregaon) Mumbai by which order the application being Notice of Motion No.1204 of 2015 filed by the Petitioner, who is the original Defendant No.5, for extending the time to file Written Statement and taking the Written Statement on record came to be rejected.

2 The suit in question has been filed for injunction and for mandatory order of demolition of the structures of the Defendants amongst whom is the Petitioner above-named. The suit summons undisputedly came to be served upon the Petitioner – Defendant No.5 on 12/09/2012. In terms of Order VIII Rule 1 of the Code of Civil Procedure, the Written Statement is required to be filed within the time stipulated in the said provision. Defendant

No.5 has not filed the Written Statement, and hence the instant Notice of Motion came to be filed for seeking extension of time to file the Written Statement and for taking the Written Statement on record. The ground made out was that the Defendant No.5 was unable to file the Written Statement as he was unwell. In support of which, the documents relating to the medical treatment were relied upon.

3 The Trial Court i.e. the learned Judge of the City Civil Court Mumbai considered the said case of the Defendant No.5 and in so far as the two certificates relating to one Tasim Pathan and Jamil Sayyed, the Trial Court held that since the name of the Defendant No.5 is Sayyed Mansoor Sayyed Ashraf alias Mulla, the said certificates are of no avail. In so far as the document pertaining to the Defendant No.5 himself is concerned, the said document was issued by Dr. Sabnis Hospital and contained advice to the Defendant No.5 to undergo X-ray examination of Chest and to get the blood test done. The said document, according to the Trial Court does not support the case of the Defendant No.5 that he was not in a position to file the Written Statement. Though it is well settled that Order VIII Rule 1 of the Code of Civil Procedure is directory and not mandatory and that for cause shown the time to file Written Statement can be extended, however, the facts of the present case where the delay is of more than 813 days of which extension of time is sought, the discretion cannot be exercised in favour of the Defendant No.5. The order

passed by the Trial Court does not suffer from any error or any other illegally or infirmity for this Court to interfere with it in its writ jurisdiction. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]