

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

**WRIT PETITION NO.759 OF 2015**

|                                |   |                    |
|--------------------------------|---|--------------------|
| M/s. Vidhi Construction        | ] |                    |
| Shop No.;3m Bldg. No.7, Amrut  | ] |                    |
| Dham, Gauri Pada, Murbad Road, | ] |                    |
| Kalyan (W) a Partnership Firm  | ] |                    |
| Through its Parnters           | ] |                    |
| 1] Dr. Kanti Ratansi Shah      | ] |                    |
| 2] Shri Ramesh A Mehta         | ] |                    |
| 3] Shri Deepak A Mehta         | ] | ..... Petitioners. |

**Versus**

|                                |   |                   |
|--------------------------------|---|-------------------|
| 1] Smt. Janabai Shriram Vayale | ] |                   |
| @ Janabai Pandurang Patil      | ] |                   |
| Age-66 yrs. Power of Attorney  | ] |                   |
| holder Shri Sanjay Haribhau    | ] |                   |
| Patil Residing at Punyai Sadan | ] |                   |
| Mhasoba Ground, Kalyan (W)     | ] | ..... Respondent. |

Mr. Amol P Mhatre for the Petitioner.  
Mr. P H Padave for the Respondent. No.1  
Respondent Nos. 2 to 95 deleted.

CORAM : R. M. SAVANT, J.  
DATE : 29<sup>th</sup> October 2015

**ORAL JUDGMENT**

1           At the outset the learned counsel appearing on behalf of the Petitioner Shri Amol P Mhatre seeks deletion of the Respondent Nos.2 to 95 as in the context of the challenge raised in the above Petition, they are only formal parties being Co-Defendants. The said Respondent Nos.2 to 95 are accordingly deleted at the risk of the Petitioner. Amendment to be carried out forthwith.

2 Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 25/09/2014 passed by the learned Civil Judge, Senior Division, Kalyan by which order the application (Exhibit 60) filed by the Defendant No.92 for setting aside the “No WS Order” and seeking extension of time to file written statement and for the written statement being taken on record came to be rejected.

4 The said rejection is on the ground that in the said application the period of delay is not mentioned as also the reasons therefor. It is required to be noted that “No WS Order” came to be passed against the Defendant No.92 i.e. the Petitioner herein on 15/07/2014 and the Defendant No.92 thereafter on 25/09/2014 filed the instant application for setting aside the “No WS Order”, seeking extension of time to file written statement, and for the written statement being taken on record. In the said application it has been mentioned that the Defendant No.92 was pre-occupied with certain revenue proceedings and hence could not give instructions to his advocate to file written statement as certain documents were to be procured by him.

5           The Trial Court as indicated above has rejected the application on the ground that the application does not contain the number of days of delay and that the application is also bereft of reasons.

6           It is required to be noted that in respect of the Defendant No.83 where the factual position can be said to be similar as in respect of the Defendant No.92 i.e. the Petitioner herein, the Trial Court has deemed it fit to accept the reasons and condoned the delay in filing the written statement and permitted the Defendant No.83 to file the written statement albeit on imposition of costs of Rs.2000/-.

7           In the instant application, the extent of delay has not been mentioned, however, that cannot be a ground to reject the instant application, when in a similar fact situation the Trial Court has deemed it appropriate to allow the application filed by the Defendant No.83 and permitted the said Defendant No.83 to file the written statement. The suit is of the year 2013 and therefore is not a suit which is pending for a long time.

8           In my view, it is always desirable that a party should be given an opportunity to prosecute the proceedings on merits rather than being thrown out on technical grounds. For the delay if any that is caused the Plaintiff can be compensated by way of costs. In that view of the matter, the impugned

order dated 25/09/2014 is required to be quashed and set aside and is accordingly quashed and set aside. The application (Exhibit 60) is allowed. The “No WS Order” dated 15/07/2014 is set aside. Resultantly time to file written statement is extended. The Trial Court is directed to take the written statement on behalf of the Defendant No.93 on record. The Petitioner i.e. the Defendant No.92 to pay costs of Rs.3,000/- to the Plaintiff within four weeks from date and produce the evidence of the same before the Trial Court. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of Petition.

**[R.M.SAVANT, J]**