

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 658 OF 2016**

Mr. Manohar Sadashiv Badigar,  
major of age,  
Son of late Sada Badigar,  
Resident of H.No.4/347/5,  
Xetiawada, Duler,  
Mapusa Goa,  
Represented by his Power of Attorney Holder,  
Mr. Gopal Annaji Badigar,  
Major of age,  
Resident of H. No.4/358-A/5,  
Xetiawada, Duler,  
Mapusa Goa.  
Constituted vide G.P.O.A.  
dated 07.02.2015  
Executed before Notary  
D.S. Petkar, Mapusa Goa.

... Petitioner

***V e r s u s***

1. The Chief Officer,  
Mapusa Municipal Council,  
Mapusa Goa.
  2. Mrs. Swati Subodh Setye,  
Major of age,  
Resident of H.No.3/4/348,  
Shetyawado, Duler,  
Mapusa Goa
- ... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioner.

Mr. S. D. Padiyar, Advocate for the respondent no.1.

Mr. Valmiki Menezes, Advocate for the respondent no.2.

**Coram:- F. M. REIS, J.**

**Date:- 25th November, 2016**

**ORAL JUDGMENT**

Heard Mr. A. D. Bhobe, learned counsel appearing for the petitioner, Mr. S. D. Padiyar, learned counsel appearing for the respondent no.1 and Mr. V. Menezes, learned counsel appearing for the respondent no.2.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. The challenge in the above petition is to an order dated

06.05.2016 whereby the application filed by the petitioner for extension of time to file written statement came to be disallowed.

5.           Though Mr. V. Menezes, learned counsel appearing for the respondent no.2 has pointed out that there is no sufficient cause shown by the petitioner to extend the time to file the written statement nevertheless, it is now well settled that the provisions of Order VIII of the Civil Procedure Code prescribes the period to file a written statement are not mandatory. It is also not in dispute that during the interregnum when the proceedings before the learned Trial Judge were in progress, there was no order passed by the learned Judge precluding the petitioner from filing any written statement.

6.           Without going into the aspect as sought to be raised by the learned counsel appearing for the respondent no.2, in the peculiar facts and circumstances of the case, as the extension of time is in the context of filing the written statement to the counter claim which has already been filed by the petitioner, I find that the delay in filing the written statement to the counter claim deserves to be condoned subject to the

petitioner paying costs to the respondent no.2 which are quantified at Rs.10,000/- as condition precedent.

7. As such, the impugned order dated 06.05.2016 is quashed and set aside. The written statement filed by the petitioner is directed to be taken on record subject to the payment of cost of Rs.10,000/- as condition precedent to the respondent no.2. Rule is made absolute in the above terms. The petition stands disposed of accordingly.

**F. M. REIS, J.**

**at\***