

Sequeira

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

WRIT PETITION NO. 4169 OF 2016

Prakash Mansukhlal Shah.

... Petitioner

Vs

Smt.Sunita Anant Mehta & anr.

... Respondents

Mr.Suresh Dubey, for the Petitioner.

Mrs. Yogini Gada i/b Harkhchand Co., for Respondent No.1.

***CORAM : N.M.Jamdar, J.
Tuesday, 6 September 2016.***

P.C. :

The Petitioner challenges the order dated 5 January 2016 whereby Notice of Motion taken out by the Petitioner for condonation of delay in filing Written statement was rejected.

2. The suit was instituted on 6 May 1999 initially, on the original side of this Court, by the Respondents-Plaintiff, who is the sister of the Petitioner. The suit is filed seeking partition of the properties. The suit was transferred to the City Civil Court. A notice of motion was taken out by the Petitioner on 24 April 2015 praying that the delay in filing notice of motion be condoned and written statement be taken on record.

3. The reason given for the delay, which is of around sixteen years,

is only that the proceedings in respect of a will are pending adjudication in the probate proceedings. The Petitioner was giving instructions regularly to the advocate and due to the negligence of the advocate, the probate proceedings were dismissed for default, and there were settlement talks. The affidavit in support of Notice of motion is totally bereft of any particulars whatsoever. Least that was expected of the Petitioner to give details and cogent reason as to why for sixteen years the written statement was not filed. Such casual and general averment can be made by any party. If details were given they could have been verified. As pointed out by the learned counsel for the Respondents that even in the probate proceedings the conduct of the Petitioner is of complete negligence. It is since the year 1999, that the Respondents-Plaintiff, the sister, is fighting in various courts for her share in the property. It is informed that in the suit now the evidence of the Plaintiff is complete and it is kept for final hearing.

4. Though while considering the application for condonation of delay in filing the Written Statement, the Court may take a lenient view but the said lenient view cannot be taken when the delay is of substantial nature, further more when the application gives no details. In the circumstances, it cannot be said that the learned Judge was in error in exercising jurisdiction in rejecting the Notice of motion. No further orders can be passed. Writ petition is accordingly disposed of.

(N.M.Jamdar, J.)