

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**WRIT PETITION NO. 8018 OF 2015**

|                               |               |
|-------------------------------|---------------|
| Kamla Marya Bare              | .. Petitioner |
| Vs.                           |               |
| M/s.Atishay Realtors Pvt.Ltd. | .. Respondent |

Mr.R.P. Singh, for the Petitioner.  
Mr.H.T. Pawar, for Respondent.

**CORAM : M.S.KARNIK, J.**

**21<sup>st</sup> DECEMBER, 2016**

**P.C. :**

. The petitioner herein is the original defendant. The Suit is filed by the plaintiff for declaration and injunction. The suit summons came to be issued some time in the year 2003, but the same could not be served. The Suit accordingly was dismissed for non service of summons on 04/04/2005. Thereafter, it appears that inadvertently, matter was listed before the trial Court and some orders were passed from time to time. However, on 17/09/2010, it was noticed that the Suit was already dismissed and Notice of Motion for restoration was pending.

2. The Notice of Motion for restoration of the Suit was heard but was dismissed by the trial Court. The Appeal filed by the plaintiff in this Court against the order passed by the trial Court dismissing the Notice of Motion was allowed on 29/01/2014 and the Suit was restored. The defendant took out Notice of Motion No. 1415 of 2015 for condoning the delay of 30 days in filing the Notice of Motion and further prayed that the written statement may be taken on record.

3. These prayers were opposed by the plaintiff. According to the plaintiff, even after the dismissal of the Suit, the defendant had participated in the proceedings and various orders were passed from time to time. Therefore, the orders passed after the dismissal of the Suit till the Suit was restored have to be treated as valid and subsisting orders. According to the learned Counsel for the respondent, there is gross delay in filing the written statement and learned trial Judge was therefore right in rejecting the Notice of Motion for taking written statement on record.

4. Admittedly, the Suit was dismissed on 04/04/2005 for non service of the suit summons on the defendant. The Suit was restored only on 29/01/2014. Notice of Motion for taking written statement on record was filed some time in May 2015.

5. In the interest of justice, I am inclined to allow the present Writ Petition in these peculiar facts.

6. As the petitioner claims to be an adivasi lady, I am inclined to allow the present Writ Petition subject to costs of Rs.2,000/-.

7. The impugned order dated 17/07/2015 passed in Notice of Motion No. 1415 of 2015 is set aside.

8. Written Statement may be taken on record. Notice of Motion No. 1415 of 2015 is accordingly allowed.

9. Writ Petition is disposed of.

(M.S.KARNIK, J.)