

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11680 OF 2015

Vs.

Mr.A.A.Pirani, Advocate for the Petitioner.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged i) the judgment and order dated 22/09/2015 below Exhibit 18 and ii) the judgment and order dated 22/09/2015 below Exhibit 22 in Special Civil Suit No. 190 of 2015. By order below Exhibit 18, the learned trial Judge allowed the application filed by the original defendant No.5 seeking permission to file written statement after condoning the delay of 55 days caused in filing the written statement. By order below Exhibit 22, the learned trial Judge allowed the application filed by original defendants No.1 to 3 seeking permission to file written statement after condoning the delay of 55 days.

3. Mr.Pirani has taken me through the applications at Exhibits 18 and 22 filed by defendant No.5 and defendants No. 1 to 3 respectively and submitted that the only reason given by them is that certain documents were not available for preparing the written statement. He submitted that the said ground has to be termed as frivolous and on that basis, delay cannot be condoned. In support of his submission, he relied upon the decision of this Court in the case of *Shailaja A.Sawant Vs. Sayajirao Ganpatrao Patil*, **2004 (2) Mh.L.J. 419** and in particular, paragraph 14 thereof.

4. It is not in dispute that the delay in filing the written statement is 55 days. In the case of *State of Nagaland Vs. Lipok AO*, **(2005) 3 SCC 752** wherein it is held by the Apex Court that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression “sufficient cause” should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

5. The learned trial Judge has considered the decision of this Court in the case of **Shailaja A.Sawant** (*supra*) and observed that defendants No. 5 and 1 to 3 can be allowed to file written statement. The learned trial Judge observed that the delay is of 55 days and if delay is not condoned, prejudice will be caused to the

defendants. In my opinion, if the delay is not condoned, defendants will not be in a position to effectively participate in the Suit. Defendant No.5 and 1 to 3 will not be in a position to lead evidence. Having regard to the shortness of the delay as also further having due regard to the fact that while allowing the application, the trial Judge has imposed costs, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)