

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

WRIT PETITION NO. 12832 OF 2016

Smt. Usha Ravindra Shirke

..Petitioner.

Vs

Shri Bhagwan Chimaji
Waghmare and Ors

.. Respondents

Mr.Nitin V. Gangal, Advocate for Petitioner.

Ms. Lalita Panchakshari, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 18/11/2016

PC:

1. Heard Mr. Nitin Gangal, learned counsel for the petitioner and Ms. Lalita Panchakshri, learned counsel for respondent no.1 at length. Mr. Gangal seeks leave to delete respondents no. 2 to 10 on the ground that respondent no.1 being the original plaintiff is the contesting respondent. On the oral application made by Mr Gangal, leave to delete respondents no. 2 to 10 is granted. Amendment shall be carried out forthwith.

2. Rule. Ms. Panchakshari waives service on behalf of the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as original defendant no.10, has challenged the Judgment and order dated 1.9.2016 passed by the learned 7th Jt. Civil Judge, Senior Division, Pune

below Exhibit-38 in Special Civil Suit No. 1615 of 2014. By that order, the learned trial Judge rejected the application made by defendant no.10 for condoning delay of 230 days in filing written statement.

3. In support of this petition, Mr. Gangal submitted that defendant no.10 filed application Exhibit 38 on 11.1.2016 along with duly affirmed written statement of defendant no.10. For the reasons stated in the application Exh.38, delay may be condoned and written statement which is annexed to this petition at Exhibit -D (Colly) (pages 26 to 33) styled as 'affidavit' may be taken on record.

4. Ms Panchakshari submitted that the impugned order may be set aside subject to imposing costs on the petitioner.

5. In view thereof, impugned order is set aside and written statement styled as Affidavit at Exhibit -D (Colly) (Pages 26 to 33) shall be taken on record. Defendant no.10 shall deposit costs of Rs.1000/- in the trial Court within two weeks from today under intimation in writing to respondent no.1's advocate. Respondent no.1 is permitted to withdraw that amount unconditionally.

6. Rule is made absolute in the aforesaid terms. Order accordingly.

(R.G.KETKAR, J.)