

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2752 OF 2014

Shri. Popat Waman Kakad

...Petitioner

Versus

Shri. Rajesh Uttam Wankhede
and Ors

...Respondents

....

Mr. P.N. Joshi, Advocate for the Petitioner.

Ms. Miskin Sonia, Advocate for Respondent Nos.2, 3 and 4.

....

CORAM : R. G. KETKAR, J.

DATE : 28th APRIL, 2016

P.C.

1. Not on board. At the request of Ms.Miskin Sonia, taken up for admission.

2. Heard Mr. P.N. Joshi, learned Counsel for the petitioner and Ms. Miskin Sonia, learned Counsel for respondent Nos.2, 3 and 4. In pursuance of order dated 23.2.2015, the petition is dismissed as against respondent No.1. So far as the present petition is concerned, respondent Nos.2, 3 and 4 being the plaintiffs are the contesting respondents.

3. Rule. Ms. Miskin Sonia waives service on behalf of respondent Nos.2, 3 and 4. At the request and by consent of the

parties, Rule is made returnable forthwith and petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 15.7.2013 passed by learned Jt. Civil Judge, Junior Division, Nashik below Exhibit-36 in R.C.S. No.416/2011. By that order, learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'defendant No.15', to condone the delay in filing say-cum-written statement. Defendant No.15 has filed application for condoning the delay of 87 days on the ground that defendant No.15 could not file written statement as he was out of Makhmalabad in connection with some agricultural work.

5. By the impugned order, learned trial Judge rejected the application on the ground that the reason given by defendant No.15 is not satisfactory and defendant No.15 failed to explain every day delay which is mandatory.

6. Ms.Miskin submitted that though the reason given in the application is that defendant No.15 was out of station in

connection with some agricultural work, cause title shows that defendant No.15 is carrying on business. In other words, she submitted that the reason given in the application for condoning the delay is false.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In the case of ***State Of Nagaland vs Lipok Ao & Ors., (2005) 3 SCC 752***, 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.

8. Applying the tests laid down in the said decision to the facts of the present case and having regard to the shortness of the delay in filing the application, in my opinion, learned trial Judge ought to have allowed the application subject to imposition of costs. More so when in paragraph-4 of the

petition, it is asserted that the written statement was ready on the same day when the application for condonation of delay was filed. The petitioner has annexed copy of the application for condonation of delay and copy of the written statement at Exhibit-B collectively. Hence, the following order :

- [i] Impugned order dated 15.7.2013 is set aside and application Exhibit-36 is allowed subject to payment of costs of Rs.3,000/- to respondent Nos.2 to 4. Costs shall be either deposited in the trial Court or paid to respondent Nos.2 to 4/orig.plaintiffs on or before 13.6.2016, failing which impugned order shall stand revived without further reference to the Court.
- [ii] Rule is made absolute in aforesaid terms. In view of disposal of the petition, interim order if any stands dissolved. Order accordingly.
- [iii] Ms. Miskin shall serve copy of this order on Mr. P.N. Joshi, Advocate for the petitioner.

(R. G. KETKAR, J.)