

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition NO. 449 OF 2016**

SERUM INSTITUTE OF INDIA  
PRIVATE LIMITED

...Petitioner

Versus

TULSIRAM KISHAN TUPE AND ORS.

...Respondents

....  
Mr. A.A. Kumbhakoni, Senior Counsel i/b. KRY Legal, for the  
Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 23<sup>rd</sup> FEBRUARY, 2016

P.C.

1. Heard Mr. A.A. Kumbhakoni, learned Senior Counsel  
for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of  
India, the petitioner has challenged the order dated 28.9.2015  
passed by learned Civil Judge, Senior Division, Pune below  
Exh.104 in Special Civil Suit No.1588/2006. By that order,  
learned trial Judge rejected the application made by the  
petitioner, hereinafter referred to as 'Defendant no.6' for setting  
aside 'No WS' order.

3. Mr. Kumbhakoni submitted that initially defendant No.6 was not made a party in the suit. On 22.7.2010, defendant No.6 was impleaded in the suit. On 1.4.2011, learned trial Judge passed 'No WS' order. On 22.7.2015, defendant No.6 filed application Exh.104 for setting aside 'No WS' order. By the impugned order, learned trial Judge rejected the application on the ground that no reasons are given in condoning the delay in filing written statement and vague statements are made.

4. Mr. Kumbhakoni submits that as learned trial Judge has rejected the application on the ground that no reasons for condoning the delay and the application is bereft of any particulars, he seeks permission to withdraw this application with liberty to file fresh application giving all the details. In view thereof, on the motion made by Mr. Kumbhakoni application Exh.104 is allowed to be withdrawn with liberty as prayed for. All contentions of the respondents are expressly kept open. Petition is disposed of. Order accordingly.

( R. G. KETKAR, J.)