

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

**WRIT PETITION NO. 6603 OF 2017**

Mrs. Sarika Yuvraj Medankar

.. Petitioner

v/s.

Smt. Sagunabai Mahipati Aherkar & Ors.

.. Respondents

Mr. Prathamesh Bhargude for the petitioner

Mr. Pritam Nigade for respondent nos. 3 and 4

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

**DATED : 14<sup>th</sup> AUGUST, 2017**

**P.C.**

1. This petition is moved for urgent relief.
2. The petition challenges the order dated 23<sup>rd</sup> August, 2016 passed by the Civil Judge, Junior Division, Khed, Dist. Pune. By the impugned order, the application of the petitioner to condone the delay of 51 days in filing the written statement was rejected.
3. This petition was on board on 21<sup>st</sup> July, 2017. Mr. Nigade had appeared for respondent nos. 3 and 4 as he appears for today. However, respondent nos. 1 and 2 did not appear inspite of service.

This Court, therefore, by order dated 21<sup>st</sup> July, 2017 had directed to issue fresh notice to respondent nos. 1 and 2, which was returnable on 11<sup>th</sup> August, 2017. In addition, the advocate for the petitioner was allowed to serve the respondent nos. 1 and 2 by private notice and file affidavit of service with acknowledgment before the returnable date i.e. 11<sup>th</sup> August, 2017. The petitioner in terms of above directions, served respondent nos. 1 and 2 and filed affidavit of service with acknowledgement of respondent nos. 1 and 2. It appears that the respondent nos.1 and 2 are not interested in resisting the petition / upholding the impugned order.

4. The learned Counsel appearing for the parties request that the petition itself be disposed of finally today.

5. I find that the delay of 51 days has been explained by the petitioner by pointing out that the advocate attending the case was unwell inasmuch as he had been hospitalized. The impugned order has rejected the application for condonation of 51 days delay without considering the explanation offered on the ground that no day-to-day explanation was given for delay in filing the written statement.

This in the face of the Apex Court decision in the case of ***Collector Land Acquisition Vs. Mst. Katiji & Ors. 1987(2) SCC 107.***

6. In the above view, this is a fit case to exercise the supervisory jurisdiction under Article 227 of the Constitution of India. Therefore, the impugned order dated 23<sup>rd</sup> August, 2016 is quashed and set aside. The learned trial Court is directed to take the written statement on record and thereafter proceed with the trial of the suit.

7. The Writ Petition is disposed of in the aforesaid terms.

**(M.S. SANKLECHA, J.)**