

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8549 OF 2017

WITH

CIVIL APPLICATION NO. 1780 OF 2017

Ms Nargis G. Hussain Topiwala .. Petitioner

vs.

Ms Rehana Abdul Salim Shaikh and ors. ..Respondents

Ms Swati P. Gautam for the Petitioner.

Mr Surya Das i/b R.R. Sharma for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 14 SEPTEMBER 2017.

P.C. :-

1] Not on board. In view of urgency taken on production board.

2] In this case, the Trial Court as well as Revisional Court have declined to condone the delay of over three years, i.e., 1180 days in filing the written statement to the application seeking eviction of the petitioner from the suit premises.

3] Admittedly, in this case, the writ summons was served upon the petitioner on 24th September 2012. The petitioner's advocate filed Vakaltanma on 26th September 2012. Thereafter, there is really no reasonable explanation as to why the written statement could not be filed for a period of over three years. Learned counsel for the petitioner points out that on 30th June 2014, the petitioner had to travelled to Australia on account of treatment. There is really no explanation as to why the written statement could not be filed from December 2012, i.e., after the expiry of the 90 days from the date of service of writ of summons till 30th June 2014.

4] The petitioner returned on 20th March 2015. Again, the written statement was not filed. The explanation is that on 30th June 2015, the petitioner, once again fell down and was required to take treatment. It is submitted that the petitioner is a senior citizen and a spinster. It is submitted that the petitioner has been looked after by nephew.

5] As noted earlier, the delay in this case, at every stage, is quite inordinate and the explanation offered, is unacceptable. Learned counsel for the petitioner submits that the period prescribed under Order 8 Rule 1 of the Code of Civil Procedure is not mandatory but directory. She is right in her submission. Learned counsel for the petitioner further points out that for the mistake of advocate the party is not to suffer. She offers to cite a decision of the Gauhati High Court in support of such proposition.

6] As regards the proposition, there may not be much dispute. However, merely saying that this is the default on the part of the advocate, it does not constitute a sufficient cause. The petitioner, has not at all pleaded or demonstrated that she was actually pursuing the matter with her advocate. It is not sufficient for the petitioner to merely engage an advocate and thereafter not to file any written statement for a period of over 3 years. It was also the duty of the petitioner to pursue the matter with her advocate to see that necessary written statement is filed in the matter. Besides, as pointed out by learned counsel for the respondent - landlord, even the petitioner has filed a suit in relation to the very same premises. The

said suit is being pursued. If so, there is really no reason or in any case, there is no sufficient cause shown for not filing the written statement within a reasonable period.

7] The two Courts have concurrently held that no sufficient cause has been shown to condone the inordinate delay of over 3 years. There is neither any jurisdictional error nor it can be said that the discretion has been exercised unreasonably or perversely. Accordingly, this writ petition is dismissed.

8] In view of dismissal of main petition, Civil Application No. 1780 of 2017 does not survive and the same is also dismissed.

(M. S. SONAK, J.)