

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11815 OF 2013
WITH
WRIT PETITION NO. 11816 OF 2013**

Shri Nagnath Mahadeo Patil & Ors.

.... Petitioners

Versus

Shri Vitthal Sarva Seva Sangh Venunagar

...Respondent

Mr. V.S.Talkute, for the Petitioners.

**CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 14th November, 2017.**

P.C. :

1. Rule. Rule made returnable forthwith. Heard. None present for the respondent, although served.
2. The original suit is of the year 2012. The present petitioner happens to be the original defendant in Special Civil Suit No.33 of 2012 and 225 of 2011 pending before the learned Civil Judge, Senior Division, Pandharpur. The petitioners had not filed their written statement within 90 days from the date of receiving summons. There was substantial delay in filing the written statement. The plaintiff had filed an affidavit of evidence and thereafter the present petitioners i.e. original defendants had filed an

application seeking the relief of setting aside the order of 'No W.S.' along with the written statement. The learned Civil Judge had observed that there is an inordinate delay which is not explained and no sufficient reasons have been assigned for condoning the delay in filing the written statement. In any case, it was filed only after the affidavit of evidence was filed by the plaintiff and hence by orders dated 5.2.2013 and 2.4.2013 had rejected the application seeking condonation of delay and accepting the written statement.

3. The learned counsel for the petitioners submits that the plaintiff had filed the suits against more than 3 persons. one of the suits filed against the present petitioners was amicably settled and therefore it cannot be said that the petitioners had any malafide intention in not filing the written statement. The learned Court has relied upon the statement of the plaintiff that the petitioners had made no efforts of amicable settlement and therefore delay cannot be condoned. However, it would not be proper to take pedantic approach as the rejection of written statement would mean that the suit has proceeded undefended and the petitioners would lose their statutory right to defend the suit. In view of this, the orders dated 5.2.2013 and 2.4.2013 deserve to be quashed and set aside. The petitioners shall file

written statement on or before 30.11.2017 and the learned Court shall accept the same only in the eventuality that it is filed before 30.11.2017. The petitioners shall pay the costs of Rs.1,000/- along with the written statement and only on that condition the learned Court shall accept the written statement.

4. The Petitions are allowed. The orders dated 5.2.2013 and 2.4.2013 stand quashed and set aside. The learned Court shall accept the written statement only if it is filed on or before 30.11.2017. The petitioners shall pay costs of Rs.1,000/- each in Special Civil Suit No.33 of 2012 and Regular Civil Suit No.225 of 2011 separately i.e. the Petitioners shall pay Rs.2,000/- in the trial Court. The learned Court may accept the same on fulfilling the condition precedent. The Petitions stand disposed of.

(SMT. SADHANA S.JADHAV,J.)