

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

WRIT PETITION NO.10528 OF 2017

Neelkanth Realtors Pvt. Ltd. .. Petitioner

Vs.

Girijja Co-operative Housing Society Ltd. .. Respondent

Mr.Bhushan Deshmukh a/w Mr.S.Mone, Mr.Vishesh Kolra i/by
M/s.Vidhii Partners for the petitioner.

Mr.Ashutosh R.Gole for the respondent.

**CORAM : R.D. DHANUKA, J.
DATE : 20th November 2017**

P.C.:

. Rule, returnable forthwith. Learned counsel appearing for the respondent waives service. By consent of parties, the petition is heard finally.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 7th July 2017 passed by the 7th Joint Civil Judge, Senior Division, Thane rejecting the application filed by the petitioner for condonation of delay caused in filing written statement on the ground that the Director of the petitioner was not keeping well and there were settlement talks going on between the parties.

3. The respondent (original plaintiff) has opposed the application for condonation of delay on the ground that there was no proof to show that the settlement talks were going on between the parties and also on the ground that the number of days of delay was not specified in the application for condonation of delay.

4. Learned trial Judge has accepted both the objections raised by the original plaintiff and has rejected the application for condonation of delay in filing written statement.

5. A perusal of the record indicates that the petitioner had recorded the reasons for condonation of the delay. The Civil Suit is of the year 2015. The learned Civil Judge, Senior Division however refused to grant extension of time on the ground that the specific number of days of delay is not mentioned in the application for seeking condonation of delay or has not produced any proof showing that the settlement talks between the parties are going on. In my view, the learned trial Judge ought to have considered the reasons recorded by the applicant.

6. The learned counsel for the petitioner states that written statement is ready and would be filed within one week from today. Statement is accepted.

7. In my view, the interest of justice would be met with if the petitioner is granted an opportunity to file written statement and delay in filing written statement is condoned and the order dated 7th July 2017 passed by the learned trial Judge is set aside on the condition that the petitioner pay costs of Rs.25,000/- to the original plaintiff within two weeks from today. If proof of payment of Rs.25,000/- towards costs is shown by the learned counsel for the petitioner within two weeks from today before the trial Court, the trial Court shall accept the written statement filed by the petitioner. The impugned order dated 7th July 2017 is set aside on the aforesaid terms. If the amount of costs is not paid by

the petitioner within two weeks from today, the order passed today to stand vacated without further reference to the Court.

8. Writ petition is disposed of in aforesaid terms.

R.D. DHANUKA, J.