

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

**WRIT PETITION NO. 13389 OF 2016**

Shri Yogiraj Krushna Lohakare ..Petitioners.  
and Ors.

Vs

Swapnabhumi Cooperative Respondents.  
Gruhanirman Samstha Ltd and  
Ors.

**WITH  
WRIT PETITION NO. 13390 OF 2016**

Shri Yogiraj Krushna Lohakare ..Petitioners.  
and Ors.

Vs

S.M.P.S.Enterprises Ltd, through Respondents.  
its Director Shri Manish  
Shriniwas Hebbar and Ors.

Mr. Sandeep R. Waghmare, Advocate for Petitioners.  
Mr. Drupad Patil, Advocate for Respondent no.1.

**CORAM : R.G.KETKAR,J.  
DATE : 02/02/2017**

**PC:**

1. Heard Mr. Sandeep Waghmare, learned counsel for the petitioners and Mr. Drupad Patil, learned counsel for respondent no.1 in both petitions at length. On oral application made by Mr. Waghmare, rest of the respondents are deleted as respondent no.1 being the original plaintiff, is the only contesting respondent. Amendment shall be carried out forthwith. Rule. Mr.Patil waives service on behalf of respondent no.1. Having regard to the narrow controversy and at the request and by

consent of the parties, Rule is made returnable forthwith and petitions are taken up for final hearing.

2. By these Petitions under Article 227 of the Constitution of India, the petitioners have challenged the orders dated 7.6.2016 passed by the learned trial Judge below Exhibit-20 in Spl. Civil Suit No. 138 of 2015 and below Exhibit-16 in Spl. Civil Suit No.140 of 2015. By these orders, the learned trial Judge rejected the application for condonation of delay in filing the written statement and taking the same on record.

3. Mr. Waghmare submitted that there is delay of 20 days in filing the written statement. He submitted that along with the application for condonation of delay, written statement was also tendered. He, therefore, submitted that delay deserves to be condoned.

4. On the other hand, Mr. Patil has invited my attention to the reply filed on behalf of the plaintiff. The plaintiff has strongly opposed the application.

5. Having regard to the fact that there is delay of 20 days in filing the written statement and further having due regard to the fact that along with the application, the petitioners have tendered written statement, in my opinion, the learned trial Judge was not justified in rejecting the applications. In the case of Shaileja A. Sawant Vs Sayajirao Ganpatrao Patil, 2004(2) Mh.L.J. 419, this Court has held that Order VIII, Rule 1 is directory.

6. In view thereof, impugned orders are liable to be set aside, thereby, allowing Application Exhibit-20 in Spl. Civil Suit No. 138 of 2015 and Application-Exhibit-16 in Spl. Civil Suit No.140 of 2015.

7. Rule is accordingly made absolute with no order as to costs. Order accordingly.

(R.G.KETKAR, J.)