

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.2091 OF 2011
IN
SUIT NO.2903 OF 1996**

Mrs.Falguni Jayesh Mehta & Anr.Plaintiffs

V/s.

Harish Ramniklal Kapadia & Ors.Defendants

Mr.Aditya Shiralkar i/by M/s.Shiralkar & Co. for plaintiffs.

Mr.Arvind Aswani i/by Jagdish Reddy for defendant no.1.

Ms.Karen D'souza i/by S.R.Mishra for defendant no.3/applicant.

CORAM : K.R.SHRIRAM,J

DATE : 6.4.2017

P.C.:-

1 This Notice of Motion is for condoning delay of 9 years in filing the written statement. The suit is of the year 1996. On 19.7.2002, the Prothonotary & Senior Master directed transfer of the suit to the list of undivided suit as against defendant nos.2 to 9. This Notice of Motion has been filed only by defendant no.3 to set aside that order and take the written statement on file. The suit is for partition and the plaintiff and the defendant nos.1 to 8 are all family members. It is stated in the affidavit in support that defendant no.3 and his advocate were under the impression that written statement was already filed. Whereas in paragraph-5 the stand taken is writ of summons itself was not served. Though I find contradiction in the stand taken, I would still condone the delay and take the written

statement on record because :-

- (a) It is a family dispute and special equities have to be looked into ;
- (b) the written statement itself has been affirmed on 3.8.2011 and the Notice of Motion has been lodged on 14.7.2011 ;
- (c) Even though the suit is of the year 1996, the trial is yet to begun though issues have been settled.

2 In my view, no prejudice would be caused if the written statement is taken on record, of course, subject to putting the applicant on some terms.

3 In the circumstances, Notice of Motion is allowed in terms of prayer clauses-(a), (b) & (c). The registry to take the written statement on record, subject to removal of office objections, which Ms.D'souza states that will be lodged in the registry during the course of today. The applicant to pay sum of Rs.10,000/- as donation to Army Welfare Fund Battle Casualties and this amount has to be paid within a period of four weeks from today.

Notice of Motion disposed.

Stand over to 18.4.2017 for further issues.

(K.R.SHRIRAM,J)