

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****Writ Petition NO. 553 OF 2018**

Suresh Singh Gayasingh Thakur

...Petitioner

*Versus*

Vinod Kumar Mohanlal Jain.

...Respondent

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Mr.M.P. Mishra, for the Petitioner.

Mr.Bhavin R.Bhatia with Mr.Santosh B.Yadav, for the Respondent.

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***Coram : G.S.KULKARNI, J******Date : 25 JANUARY 2018***

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**P.C.**

1. Heard learned Counsel for the parties. This petition challenges the order passed by the learned Judge, Small Causes Court, Bombay wherein the application filed by the respondents-defendants for condonation of delay in filing written statement stands allowed in the following terms:-

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**ORDER**

1. Application is allowed subject to costs of Rs.500/- to be paid to the plaintiff.
2. Delay caused in filing written statement is condoned.
3. Written statement of the defendant is taken on record.
4. Costs in cause.
5. Application is disposed of.”

2. Respondents-defendants had moved an application for condonation of delay on the ground that the writ of summons was received by defendant no.2 on 27 August 2015 and accordingly, he had appointed advocate who had filed vakalatnama. The case was attended by the Advocate Vandana Tiwari who was junior advocate of advocate on record, who subsequently got married and left the office of the advocate on record. It was submitted that in the month of December, 2015, as there was death in the family of advocate on record, he had left for Uttar Pradesh and therefore, written statement could not be filed. In the meantime, the matter was attended by Advocate Jitendra Gupta on several dates. The defendants in the circumstances, could not file written statement within the prescribed period of limitation. There is delay of 474 days from the date of service of writ of summons, to file written statement. The defendants in the delay condonation application have contended that the delay was unintentional and bonafide.

3. This application of the respondents/defendants was opposed by the petitioner-plaintiff. The contention basically was that though the junior advocate was handling the matter, the advocate on record ought to have attended the matter and he was not diligent in filing the written statement. It was submitted that the defendants in the delay condonation application had failed to make out any case for condonation of delay.

4. Learned trial Judge considering the rival pleas observed that the matter was entrusted to the advocate on record and it was also his

responsibility to proceed with the matter and it was thus not the sole responsibility of the junior advocate. It was observed that the rights of the defendants to contest the suit cannot be taken away for the fault of the advocate. Accordingly, the delay condonation application was allowed in the above terms.

5. Learned Counsel for the petitioner in assailing the impugned order, would submit that sufficient ground was not made out for the Court to condone the delay. It was submitted that there were clear lapses on the part of the advocate who had entered vakalatnama, in not filing written statement within prescribed period of limitation. Thus, such lapses cannot be condoned and the application of the respondents-defendants ought to have been rejected. In support of his submission, the learned Counsel for the petitioner has placed reliance on the judgement of the Supreme Court in the case “*Bal Gopal Maheshwari & Ors. Vs. Sanjeev Kumar Gupta*”<sup>1</sup> and the judgement this Court in the case “*Umesh Shantaram Khedekar Vs. Peshotan Wadia & Ors.*”<sup>2</sup>

6. On the other hand, learned Counsel for the respondents-defendants has supported the impugned order. It is submitted that the learned trial Judge considering the facts and circumstances of the case and the cause of justice has condoned the delay and permitted the respondents to file written statement. It is submitted that the intent and purpose of the petitioner to file the present writ petition is different inasmuch as now

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1 Civil Appeal No.7279 of 2013 decided on 30.8.2013

2 Writ Petition No.6130 of 2010 decided on 2.12.2010

the respondents-defendants had moved an application under Section 9A of the Civil Procedure Code challenging the maintainability of the suit and no sooner the said application was filed, the present petition was instituted. Learned Counsel for the respondents thus submits that no cause has been made out by the petitioner for this Court to interfere in the present petition.

7. Having heard the learned Counsel for the parties and having perused the documents as placed on record and the impugned order, in my opinion, no cause has been made out by the petitioner, for interference of this Court. It is not in dispute that the respondents-defendants had appeared in the suit and entrusted the case to the advocate who had entered vakalatnama. It is also not in dispute that the advocate was appearing from time to time, however, no steps were taken by the advocate to file written statement within the prescribed period of limitation for the causes which are clearly set out in the delay condonation application as also recorded in paragraphs 4, 5 and 6 of the impugned order. The principle of law is well settled that a party to the litigation should not suffer on account of any inadvertent mistake or lapses on the part of the advocate. The only contention as urged on behalf of the petitioner is on the conduct of the advocate and nothing on any specific lapse on the part of the respondents. If this be the position, then, certainly there cannot be any fault which can be found with the impugned order. The decisions as being relied on behalf of the petitioner also, in my opinion, would not be applicable in the facts of the present case. These are not the judgements where the Court has considered lapses on the part of

the advocate. The general principles of law which are referred in the judgements are well settled. However, in the facts and circumstances of the present case, it is very clear to show that there was no personal lapses on the part of the defendants in filing the written statement. It appears that it is the mistake of the advocate for which the respondents-defendants cannot be penalised.

8. The petition is without any merits. It is accordingly rejected.  
No costs.

**(G.S.KULKARNI, J)**