

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3641 OF 2017

Chhedilal Ram Naval Nishad	... Petitioner
v/s	
Kalawatidevi Ram Naval Nishad	
and ors.	... Respondents

**WITH
CIVIL APPLICATION NO.591 OF 2018
IN
WRIT PETITION NO.3641 OF 2017**

Chhedilal Ram Naval Nishad	... Applicant
v/s	
Kalawatidevi Ram Naval Nishad	
and ors.	... Respondents

Mr Jay Shankar Singh for Petitioner/Applicant.
Mr S.P. Shrivastava for Respondent No.1.

CORAM : B.P. COLABAWALLA J.

DATE : 26TH NOVEMBER, 2018.

P.C. :-

1. Rule. Respondent No.1 waives service. Other Respondents, though served, are not appearing. Rule is made returnable and heard finally.

2. By this Writ Petition, the Petitioner challenges the order dated 2nd February 2017 by which the Trial Court dismissed the

Notice of Motion filed by the Petitioner herein (original Defendant No.1) for taking his written statement on record. It appears that there is a delay of 21 months in filing the written statement. This delay has been explained in the affidavit filed by Defendant No.1 dated 17th November 2015. In this affidavit, it is stated by Defendant No.1 that after the Suit was filed, he approached the Plaintiff and discussed the facts of the case wherein he brought to the attention of the Plaintiff that Defendant No.1 was a co-owner of the flat with the other Defendants and the Plaintiff could not claim to be the absolute owner of the said flat. According to Defendant No.1, the Plaintiff therefore agreed to withdraw the Suit. He, however, did not do so. It has been further stated that Defendant No.1 was not well and suffering from many diseases and was under depression. He was also under the treatment of doctors and those doctors' certificates have been produced on record. This is how the delay is sought to be explained.

3. After hearing the learned counsel for the parties, I do not think that it would be fair to deny Defendant No.1 from contesting the Suit on merits. To my mind, Defendant No.1 has sufficiently explained the delay. Defendant No.1 therefore, should be given one opportunity to file his written statement before the Trial Court. However, it cannot be done unconditionally and Defendant No.1 will have to pay the costs to the Plaintiff. In these circumstances,

following order is passed :-

- a) The impugned order dated 2nd February 2017 is quashed and set aside and the Trial Court is directed to take the written statement of Defendant No.1 on record subject to him paying costs of Rs.10,000/- (Rupees Ten Thousand only) to the Plaintiff within a period of two weeks from today.
 - b) If the costs are not paid as directed above within the stipulated period, the Writ Petition shall stand automatically dismissed and the impugned order shall stand.
4. Writ Petition is disposed of. However, there shall be no order as to costs.
5. In view of the disposal of the Writ Petition, nothing survives in Civil Application No.591 of 2018 and the same is disposed of accordingly.

(B.P. COLABAWALLA J.)