

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

WRIT PETITION NO. 1778 OF 2017

Milind Sitaram Thakare	...	Petitioner
V/s.		
Sau. Balika Milind Thakare & Anr.	...	Respondents

- Mr.Sachin D. Kadam for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th FEBRUARY, 2018.

P.C. :

- 1] Heard learned counsel for the Petitioner.
- 2] Respondent Nos.1 and 2, who are the original Plaintiffs, are duly served with notice but remained absent on the last date and today also.
- 3] This Writ Petition is filed challenging the order dated 7th September, 2015, passed below Exhibit-28 in Regular Civil Suit No.100 of 2012 by Civil Judge Junior Division, Chandwad, District Nashik.
- 4] The application at Exhibit-28 was filed by the present Petitioner for condoning the delay in filing of the written statement. The trial Court has, however, rejected the said application on the

ground that no sufficient explanation is offered for the substantial delay caused in filing of the written statement.

5] However, as rightly pointed out by learned counsel for the Petitioner, the summons of the suit was served on the Petitioner on 9th January, 2012 by the Court at Niphad; thereafter the Suit was transferred to the Court at Chandwad and hence, the fresh summons was issued and served on the Petitioner on 24th July, 2013. He has appeared in the Suit on 29th July, 2013. On the same day, the application for amendment of the plaint was filed by the Respondents/Plaintiffs. The Petitioner resisted the said application by filing say to the application. The Application for amendment of the plaint was allowed on 20th February, 2014. Thereafter, on 5th May, 2014, the application for filing of the written statement by the Petitioner was also allowed. However, subsequently, it was brought to the notice of the trial Court that there was delay in filing of the written statement and hence, the Petitioner filed an application for condonation of delay. The trial Court rejected the same holding that there was no sufficient reason.

6] However, in my considered opinion, if one considers the above said sequence of events, then, it can not be said that the Petitioner has not offered sufficient reason for condonation of delay,

which has occurred in filing of the written statement. What the Court has to see, in such situation, is whether the Petitioner was diligent in prosecuting the litigation pending in the Court. Admittedly, the Petitioner was diligent, as he has resisted the application for amendment of the plaint. Only after the plaint was allowed to be amended, naturally he was to file the written statement and accordingly, he has filed such written statement. It may be true that, there is some delay in filing the written statement but then as it was taken on record, thereafter only, the Petitioner was directed to file the application for condonation of delay, there appears to be delay of 2 years and 6 months, but in actual effect there was no substantial delay as such.

7] In view thereof, the impugned order passed by the trial Court rejecting the Petitioner's application for taking his written statement on record, condoning the delay, or which is actually the extension of the period for filing the written statement needs to be set-aside.

8] The Writ Petition is accordingly allowed. The impugned order passed by the trial Court is set-aside. The Application at Exhibit-28, filed by the Petitioner is allowed and the written statement is allowed to be taken on record, subject to costs of Rs.5,000/- to be paid

to Respondent Nos.1 and 2 within 15 days from the receipt of the order by the trial Court.

9] Writ Petition is disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]