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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
WRIT PETITION NO. 10387 OF 2016.**

Nayan Shah	...	Petitioner
V/s.		
Mrs Concy D'souza and ors	...	Respondents

Mr.Atul Damle, Senior Counsel with Harsh Behany
I/by Maniar Shrivastava Associates, for the
Petitioner.

Mr. S. M. Kamble, for the Respondent Nos. 1 to 4.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondents
- 2] By this writ petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 5th December 2015, passed by 2nd Joint Civil Judge S.D., below Exh.128 in R.C.S.No. 203 of 2007.
- 3] Application at Exh.128 was preferred by the present petitioner, who is defendant No.11 in the trial Court, for setting aside the order of “No W.S”, and permitting him to file written statement.
- 4] However, if the reasons given by the trial Court are perused, then it is apparent that no sufficient reason or explanation, worth the name, is given by the petitioner for not filing written

statement from the year 2007 till 2015. He has only given the details as to how the matter proceeded from 2007 till the year 2014. However, that cannot act as explanation for condonation of delay and for accepting the written statement, that too after the trial has commenced. Respondent-plaintiff has already filed affidavit in-lieu of evidence and he is to be cross examined.

5] Hence, in the absence of any explanation worth the name, for condonation of delay of 8 years in filing of written statement, the impugned order passed by the trial Court, rejecting such application being just and legal, does not call for any interference.

6] However, at this stage, learned counsel for the petitioner submits that the petitioner has already filed his written say at Exh.43, to the application for interim injunction at Exh.5 and it may be treated as his written statement to the suit.

5] In view of the observations made by the trial Court, in paragraph No.13 of its order, there should not be any difficulty in treating the written say at Exh.43 to be the written statement of the suit.

7] With this clarification, writ petition stands disposed of as dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]