

psv

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

WRIT PETITION NO.1583 OF 2018

Dr.Murad Dhamjishaw Oomrigar & Ors.	...Petitioners
V/s.	
Surajmal Lallubhai & Co. and Ors.	...Respondents

Ms.Z.S. Irani for Petitioners.

CORAM : G.S. KULKARNI, J.

DATE : 15th FEBRUARY, 2018

P.C.:

Heard learned Counsel for the petitioners.

2. The challenge in this petition is to the order dated 13th October 2017 by which the application as filed by the defendant No.3(a) who was brought on record as the legal heir of original defendant seeking condonation of delay in filing written statement has been allowed.

3. It is not in dispute that the defendant No.3(a) was brought on record in view of the original defendant No.3 having expired. By the application in question, the defendant no.3(a) submitted that due to lack of knowledge about court procedure and technical difficulties in acquiring paper/document, there was delay of 17 days in filing written statement. It is also averred that there was no negligence on the part of the defendant no.3 in pursuing the proceedings. For these reasons, the delay be condoned.

4. The said application was opposed on behalf of the petitioners. The petitioners contended that the suit had proceeded ex-parte against the defendants as no written statement was filed and unless the said order is set aside, it is not permissible to the added party to make a request to file a written statement. The learned trial Judge, however, by the impugned order in the interest of justice, has condoned the delay and permitted added defendant No.3(a) to place on record the written statement.

5. Heard learned Counsel for the petitioners. The contentions of the learned Counsel for the petitioners are similar to what was urged before the learned trial Judge and in the reply as filed before the trial Court. It cannot be disputed that a right to file written statement is a substantive right of the litigant. It may be true that the original defendant has not filed written statement. However, on the demise of the original defendant No.3 when the defendant No.3(a) was brought on record, it cannot be said he was brought on record only as a paper formality and that he has no substantive right to defend the suit and to file a written statement only because the Court had passed an order for the suit to proceed ex-parte against the deceased defendant. The interest of justice is paramount in such peculiar situations, than hard technicalities. Even assuming that formally an order to set aside the order against the original defendant of the suit to proceed ex-parte is not passed, in the circumstances it would be required to be held that the said order against the original defendant is set aside in permitting defendant No.3(a) to file written statement. Further it is also relevant to note that the suit is at the stage of framing of issues.

6. In the interest of justice and to determine the real controversy between the parties, the Court has powers to permit the party to file

written statement at any stage of the suit. Considering the facts and circumstances of the case, the learned trial Judge has rightly allowed the application of the defendant No.3(a). I do not find any ground to interfere in the impugned order. The writ petition is devoid of merit. It is accordingly rejected. No costs.

7. Considering that the suit is old, the petitioners are at liberty to request the learned trial Judge to expedite the hearing of the suit. If such application is filed, the same be considered on its own merits.

[G.S. KULKARNI, J.]