

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION STAMP NO. 12550 OF 2019 IN
WRIT PETITION NO. 68 OF 2018**

**SANJIANI RAFAEL THORAT AND OTHERS
VERSUS
RAFAEL MARTIN THORAT AND OTHERS**

WITH

WRIT PETITION NO. 68 OF 2018

**RAFAEL MARTIN THORAT AND OTHERS
VERSUS
VIJAY RANGNATH GAIKWAD AND OTHERS**

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Advocate for the Petitioners : Shri G. L. Deshpande
Advocate for the Respondents : Ms. S. R. Rajput

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 09th APRIL, 2019.

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PER COURT :

1. Petitioner No.1 - original plaintiff and who is the power of attorney holder for petitioner Nos. 2 to 8, has passed away. A Civil Application is tendered by the learned Advocate for the L.Rs. of deceased petitioner No.1, across the bar.
2. Considering the issue involved and the fact that the suit of 2009 has been pending on account of the pendency of this

petition, the Civil Application is being entertained. The learned Advocate appearing on behalf of respondent No.1, who is the only party involved in this matter, does not oppose the Civil Application.

3. In view of the above, the Civil Application Stamp No. 12550/2019 is allowed and the L.Rs. of deceased petitioner No.1 are taken on record.

4. On 17/01/2018, this Court had issued notice only to respondent No.1, who is the contesting party. The order passed on 17/01/2018 reads thus :-

"1 The Petitioners/ original Plaintiffs are aggrieved by the order dated 28.09.2017 passed by the Trial Court below Exhibit-170 thereby, permitting Defendant No. 1 to file his Written Statement after delay of more than 08 years, by imposing costs of Rs. 5,000/-.

2 The learned Advocate for the Petitioners submits that the notice can be issued only to Respondent No.1 as the impugned order is in connection with the said Respondent.

3 Issue notice to Respondent No.1 returnable on 23.02.2018.

4 The copy of the petition paper book shall be

supplied for issuance of notice on or before 24.01.2018, failing which this petition shall stand dismissed without reference to the Court w.e.f. 25.01.2018.

5 *The Trial Court may proceed with Special Civil Suit No. 55/2019 to the extent of recording of oral evidence of the Plaintiffs, but would adjourn the matter at the stage of recording of oral evidence of Defendant No.1".*

5. The learned Advocate for the plaintiffs has strenuously criticized the impugned order on the ground that practically eight years delay has been condoned by the Trial Court. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of ***Salem Advocate Bar Association vs Union Of India, AIR 2005 SC 3353*** . He submits that defendant No.1 was negligent and casual while participating in the suit. When all other defendants started filing their written statements, nothing prevented defendant No.1 from filing his written statement. Reliance is placed upon the judgment of this Court in the matter of ***Mehendara P. Shah Vs. Gurupreet Kamaljeet & Ors. 2016(3) ALL MR 142***, wherein this Court declined to condone delay of 2200 days caused in filing the written statement.

6. The learned Advocate for defendant No.1 herein, submits that the said defendant has specifically set out in application Exhibit 170 that the Advocate representing this defendant, was constantly seeking adjournments. On three occasions, the Trial Court granted adjournments. On the fourth occasion, the Trial Court rejected the request for adjournment. It is further informed that considering that there were several parties involved, the defendants were being served with Court summons, as long as in 2016, when the suit was filed in 2009.

7. It is further stated that defendant No. 1 was dissatisfied with the manner in which his Advocate was conducting his case and hence, he withdrew the Vakalatnama and engaged a new Advocate. After the new Advocate caused her appearance and was prepared to cross examine the plaintiff, the file received by her did not contain the written statement. When enquired about the same, defendant No. 1 informed her that his earlier Advocate had not filed the written statement. It was then that the said Advocate filed Exhibit 170 seeking leave to file the written statement.

8. I have considered the submissions of the learned Advocates for the respective sides. There is no dispute that the proviso introduced below Rule 17 under Order VI in 2002 was aimed at curtailing adjournments and ensuring speedy trials. The learned Advocate for the petitioner is justified in contending that delay of 8 years cannot be condoned lightly.

9. Notwithstanding the above, I cannot ignore the fact that the suit property is an immovable property and defendant No.1 would be practically rendered defenceless if the application permitting filing of written statement is not allowed and the delay is not condoned. The plaintiff can be compensated with costs so as to soften the rigors of litigation.

10. It also cannot be ignored that defendant No.1 would not derive any advantage in proceeding with the suit without his written statement. Though the learned Advocate for the plaintiffs contends that the intention of the defendant is to delay the proceedings, this grievance can be redressed by granting a time frame to the Trial Court to decide the suit

lodged in 2009.

11. In view of the above, this petition is partly allowed only to the extent of enhancing the costs. The Trial Court has saddled defendant No.1 with an amount of Rs. 5,000/- (Rupees Five Thousand only) as costs by the impugned order dated 28/09/2017. The said cost amount has already been deposited according to the statement made across the bar. Considering that the delay is of eight years, I deem it appropriate to direct defendant No. 1 to deposit a further cost amount of Rs. 10,000/- (Rupees Ten Thousand only) before the Trial Court on or before 04/05/2019. On the condition of deposit, the Trial Court would permit the said defendant to file the written statement on record. Failing to deposit the said costs, would result in the Trial Court ignoring the written statement of defendant No.1 on the presumption that no written statement has been filed.

12. Needless to state, after the cost is deposited, the plaintiffs are at liberty to withdraw the said cost in equal proportions without conditions.

13. Since the suit is lodged in 2009, the Trial Court would decide the said suit as expeditiously as possible and in any case, on or before 29/02/2020.

(RAVINDRA V. GHUGE, J.)

shp/-