

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

WRIT PETITION NO.1450 OF 2019

M/s. Paras Developers ... Petitioner

Vs.

Shobhana S. Hardas & Ors. ... Respondents

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Mr. Sandeep Mishra a/w Mr. Prakash Mishra for the Petitioner.
None for the Respondents.

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CORAM : M. S. KARNIK, J.

DATE : 5th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The petitioner is the original defendant No.2. None for the respondents though they are duly served in terms of the order dated 30.8.2019 passed by this Court. Learned counsel for the petitioner has produced on record details of having served the respondent No.1. He undertakes to file affidavit of service by 9.9.2019. He states that the respondent No.1 are duly served in terms of the order dated 30.8.2019 passed by this Court.
3. The respondent No.1-original plaintiff filed a suit for declaration and injunction being Regular Civil Suit No.471 of 2007. The relief sought in the suit is to declare the order dated

4.10.2006 of sanctioning the plan by V.P. No.97/073 as illegal, ultra virus and bad in law. Though the suit is of the year 2007, it is the contention of the petitioner that the suit summons were served on the petitioner only in the year 2017. The application at Exhibit 81 was filed by the petitioner-original defendant No.2 for taking the written statement on record. In the said application it is contended that there is four months delay in filing the written statement and the same is deserves to be condoned for the reasons stated therein. In the application it is stated that he was not keeping well for sometime. By an order dated 27.11.2017 Trial Court rejected the written statement as according to the Trial Court the written statement is sought to be filed after expiry of the stipulated period without application for delay condonation.

4. When it was noticed that the application for condonation was already on record, the Trial Court, however, by the order dated 18.6.2018 rejected the application for condonation of delay as already order is passed below Exhibit 83. Thereafter the petitioner filed the application for review which also came to be rejected by order dated 21.11.2018.

5. None appeared on behalf of the respondent No.1 despite service. Though the suit is of the year 2007, the suit summons are served almost after 10 years on the petitioner-defendant No.2. He therefore filed application for taking the written statement on record by condoning the delay of four months in filing the written statement. In the said application specific reasons are mentioned for the delay. It is stated that defendant No.2 was not keeping well.

6. The Trial Court refused to take written statement on record on the ground that as the defendant No.2 did not file any application for condonation of delay. When it was pointed out that necessary application for condonation of delay is already on record, the Trial Court did not consider this application as it had already rejected the application for filing written statement.

7. In my opinion and as can be seen from the averments in the application, there is delay of four months in filing the written statement. The delay in my opinion is not inordinate or unexplained by the defendant No.1. Issues are already framed and the matter is fixed for evidence of the plaintiff.

8. In my opinion, defendant No.2 should not be deprived of the right to defend the suit as the plaintiff can always be compensated with cost for the delay caused in filing the written statement. I find that satisfactory reasons are recorded in the application for the delay caused in filing the written statement. The impugned orders are therefore set aside. The delay caused in filing the written statement is condoned. The written statement is already on record be treated as the written statement of defendant No.2.

9. The petition is allowed subject to payment of cost of Rs.5,000/- to the plaintiff. The cost to be deposited in the Trial Court within a period of two weeks from today. The plaintiff is allowed to withdraw the cost.

(M. S. KARNIK, J.)