

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

WRIT PETITION NO.5152 OF 2019

Shivaji Balu Vadar

... Petitioner

Vs.

Vilas Bhimrao Gokhale & Ors.

... Respondents

.....

Mr. Dilip B. Shinde for the Petitioner.

.....

CORAM : M. S. KARNIK, J.

DATE : 16th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. None for the respondents though they are duly served in terms of the order passed by this Court on 4.9.2019. Affidavit of service stating that the order dated 4.9.2019 is complied with is filed which is taken on record and marked as Exhibit 'X'. The petitioner is the original defendant No.2 has challenged the order dated 17.12.2018 passed below Exhibit 75 refusing to take the additional written statement on record. The suit is filed by the original plaintiff seeking perpetual injunction from constructing the road and restraining the

defendants from fixing the drainage line. The petitioner-original defendant No. 2 had filed written statement. The plaintiff applied for amending the suit. The petitioner did not file additional written statement to the amendment and therefore no written statement order was passed. The application was made below Exhibit 75 by the petitioner for setting aside the no additional written statement order. The Trial Court rejected this application on the ground that there is delay of around two years in filing the application for setting aside the no additional written statement order.

3. In the suit, I am informed that though the issues have been framed, the evidence is yet to be recorded. As the original plaintiff has not appeared despite service of notice, in the interest of justice, for the reasons mentioned in the application and this petition, the delay in filing the additional written statement deserves to be condoned. For this delay the plaintiffs deserve to be compensated with cost. The petitioner-original defendant No.2 should not be deprived of his right to file additional written statement only on the ground of delay. In the facts of the present

case, the delay in taking the written statement on record can be condoned by imposing cost of Rs. 5,000/-. The cost of Rs. 5,000/- be deposited by the petitioner in the Trial Court within a period of two weeks from today. The plaintiff is allowed to withdraw the cost.

4. The petition is allowed. The impugned order is set aside. Application Exhibit 75 is allowed.

(M. S. KARNIK, J.)