

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 4266 OF 2018

Jayant G. Pathak

.. Petitioner

vs.

Smt. Leela Shankar Limaye  
(since deceased through  
Lrs. and ors.)

.. Respondents

None for the Petitioner.

Mr. Sanjay Chitale for Respondent Nos.1(A),1 (B) and 1 ©.

**CORAM : M. S. SONAK, J.**

**DATE : 29 MARCH 2019.**

**ORAL JUDGMENT :-**

1] None for the petitioner. Mr. Chitale, learned counsel appears for the respondents. He states that by order dated 17<sup>th</sup> September 2018, further proceedings in the suit had been stayed.

2] Since the petitioner is armed with the interim relief, it was a duty of the petitioner and/or his advocate to remain present and argue this matter.

3] Accordingly, Mr. Chitale, learned counsel for the respondents was heard in the matter.

5] Rule. With the consent of the learned counsel for the respondents, Rule is made returnable forthwith.

6] The challenge in this petition is to the order dated 18<sup>th</sup> November 2017 by which learned Trial Judge has declined to condone the delay of about 10 months in filing the written statement and taking on record the written statement.

7] Mr. Chitale, learned counsel for the respondents, submits that the evidence has already commenced and the matter was adjourned on three to four occasions only in order to enable the petitioner to proceed with cross-examination. However, the petitioner avoided cross-examination and only delayed the matters. Mr. Chitale submits that there is really no explanation for inordinate delay and therefore, there is no case made out to interfere with the impugned order.

8] The record indicates that the petitioner had taken out an application under Order 7 Rule 11 of CPC. The petitioner has then explained that he was suffering from abdominal

pain as a result of which the written statement could not be filed. Though, there is something to be said about the conduct of the petitioner, the impugned order depriving the petitioner opportunity of filing written statement appears to be a little harsh, in the facts and circumstances of the present case. No doubt, if the impugned order is interfered with, prejudice will occasion the respondents. However, such prejudice can be compensated in terms of costs, which, taking into consideration conduct of the petitioner, will have to be substantial.

9] Accordingly, in order to promote substantial justice, the impugned order dated 18<sup>th</sup> November 2017 is set aside and leave is granted to the petitioner to file written statement in the suit within a period of four weeks from the date of service of this order. This is however, subject to the petitioner paying to the respondent herein costs of Rs.30,000/-, again, within a period of four weeks from the date of service of this order. If there is any difficulty in making such payment directly to the respondents, the petitioner to deposit the amount of costs before the learned Trial Judge within four weeks from

the date of service of this order. Thereafter, the respondents will have liberty to unconditionally withdraw the said amount.

10] The learned counsel for the respondents is requested to furnish a copy of this order to the petitioner, since, neither the petitioner nor his advocate is present today. Learned counsel for the respondents has graciously agreed to do so. It is made clear that the time limit specified in this order will apply only from the date of service of this order to the petitioner.

11] Rule is made absolute in the aforesaid terms. The interim order granted earlier is hereby vacated.

12] Learned Trial Judge is directed to dispose of the suit as expeditiously as possible and in any case on or before 31<sup>st</sup> March 2020.

13] All concerned to act on the basis of an authenticated copy of this order.

**(M. S. SONAK, J.)**