

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

WRIT PETITION NO.5267 OF 2018

Jasbir Kaur Nagi and ors. : Petitioners.
Versus
Mrs.Meena Vinay Pandey and ors. Respondents.

Mr. Kunal Bhanage for the Petitioners.
Ms. Harshali Parab I/by Mr. Prasad B Gaonkar for the Respondent No.1.

CORAM: K.K. TATED, J
DATED : FEBRUARY 01, 2019

P.C. :

1 Heard the learned counsel for the parties.

2 The learned counsel Mr. Kunal Bhanage appearing for the Petitioners submits that the Respondent Nos.2 to 5 are duly served. He further submits that the Respondent Nos.2 to 5 are formal parties for the issues involved in the present Writ Petition.

3 The learned counsel Mr. Kunal Bhanage appearing for the Petitioners submits that by this Writ Petition under Article 227 of the Constitution of India the Petitioner/original Defendant Nos.1, 2 and 5 are challenging the order dated 21/02/2018 passed by the Bombay City Civil Court for Greater Mumbai rejecting their Notice of Motion No.4149 of 2015 in Suit No.4399 of 2010 for setting aside “no written statement” order dated

21/11/2014 by condoning delay of 5 years and 28 days.

4 After arguing for sometime, the learned counsel Ms. Harshali Parab appearing for the Respondent No.1 who is the contesting party submits that, she does not have any objection if the present Writ Petition is allowed. The Petitioners to file their written statement immediately with a copy to Respondent No.1. She further submits that as the dispute is between the family members for partition of the property, this Hon'ble Court be pleased to expedite the hearing of the Suit No.4399 of 2010.

5 Considering the submissions made by the learned counsel for both the sides and by consent of the learned counsel appearing for the Respondent No.1, following order is passed :-

a. Order dated 21/02/2018 passed by the Bombay City Civil Court for Greater Mumbai rejecting Notice of Motion No.4149 of 2015 in Suit No.4399 of 2010 is set aside.

b. Delay in filing the written statement on behalf of the Defendant Nos.1, 2 and 5 is condoned.

c. The Defendant Nos.1, 2 and 5 are permitted to file their written

statement on or before 28/02/2019 with a copy to other side.

d. The court below is directed to accept the written statement of the Defendant Nos.1, 2 and 5, if it is filed by them on or before 28/02/2019.

e. If the written statement is filed in time by the Defendant Nos.1, 2 and 5, the Trial Court is directed to decide the Suit No.4399 of 2010 on its merits.

f. Hearing of the Suit No.4399 of 2010 pending before Bombay City Civil Court for Greater Mumbai is expedited.

g. The Writ Petition is disposed of accordingly.

h. No order as to costs.

(K.K. TATED, J.)