

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4509 OF 2017

Smt. Malan P. Badhale .. Petitioner

vs.

Mrs. Makhabai P. Kendle and ors. .. Respondents

Mr. D.S. Patil a/w. Mr. B.G. Ligade for the Petitioner.

CORAM : M. S. SONAK, J.

DATE : 02 MAY 2019.

ORAL JUDGMENT

- 1] Heard Mr. D.S. Patil, learned counsel for the petitioner.
- 2] On 23rd March 2017, this Court made the following order:

“1. Not on board. At the request of Mr. Patil, taken up in the production board.

2. Heard Mr.D.S. Patil, learned Counsel for the petitioner.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.3', has challenged the judgment and order dated 11.1.2017 passed by the learned 7th Jt. Civil Judge, Senior Division, Pune below Exhibit-33 in Special Civil Suit No.221/2016. By that order, the learned trial Judge rejected the application made by the defendant No.3 for condoning the delay of 86 days caused in filing application for setting aside no written statement order and also for taking on record the written statement. Mr.Patil submitted that along with the application, defendant No.3 has filed duly verified written statement.

4. In view of these submissions, issue notice to the

respondents, returnable on 26.04.2017.

5. Parties are put to notice that subject to time constraint and the convenience of the Court, Petition may be disposed of finally on that date at the stage of admission. Notice shall further indicate that despite service, if the respondents fail to appear, the Court may proceed to decide the Petition on its own merits.”

3] Mr. Patil states that service has been effected upon respondent Nos.1 and 2-original plaintiffs and even affidavit of service has been filed.

4] In view of the aforesaid as also taking into consideration the order dated 23rd March 2017, Rule is granted in this petition and the same is made returnable forthwith.

5] The challenge in this petition is to the order dated 11th January 2017 by which learned Trial Judge has refused to condone delay of 86 days in filing written statement or rather in recalling no written statement order.

6] Mr. Patil points out that in this case, there was no order precluding the petitioner from filing a written statement. This was only a case where delay of 86 days in filing written

statement. He submits that the delay was in fact of 38 days, but the learned Trial Judge has held that the delay was of 86 days, possibly, computing the delay from 30th day from the date of receipt of summons for settlement of issues. He submits that the sufficient cause was shown and the same was incorrectly rejected by the Trial Judge. He submits that this is a fit case where the impugned order deserves to be set aside and an opportunity be granted to the petitioner to file a written statement.

7] Having considered the material on record as well as the impugned order, this does appear to be a fit case where the delay in filing the written statement deserves to be condoned and an opportunity deserves to be granted to the petitioner for filing her written statement. Though, the reasons in the application are not very artistically worded, the petitioner has set out that she is an illiterate person who had relied upon her advocate to do the needful. The petitioner has admitted that she did not contact her advocate, but has explained that she was not aware of necessitating of contacting her advocate. Taking into consideration of the fact, the delay of

hardly 86 days, it cannot be said that the cause shown is not sufficient. The petitioner has really not gained anything by delaying the filing of written statement. No doubt, some prejudice will occasion the plaintiffs, this is the prejudice which can always be compensated by award of costs.

8] Accordingly, the impugned order is set aside. The petitioner is granted leave to file written statement. Mr. Patil states that the written statement is already filed. Accordingly, learned Trial Judge is directed to take the written statement on record and proceed with the suit. All this is subject to the petitioner depositing costs of Rs.5000/- before the Trial Court on or before 15th June 2019. If the costs are deposited, respondent Nos.1 and 2, i.e., original plaintiffs are at liberty to withdraw the same unconditionally. However, if costs are not deposited, then this petition shall be deemed to have been dismissed with costs of Rs.5000/- without further reference to this Court.

9] Rule is made absolute in the aforesaid terms.

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

(M. S. SONAK, J.)