

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

WRIT PETITION NO.4313 OF 2019

Rambhau Dattaram Malankar ... Petitioner
Vs.
Vijay Vasanji Adsani and Ors. ... Respondents

Mr. Shailendera S. Kanetkar for the Petitioner.
Mr. Amit S. Kapse for respondent No.1.

CORAM : M. S. KARNIK, J.
DATE : 26th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The petitioner is the original defendant No.1. The defendant No.1 filed the Notice of Motion No. 3882 of 2017 for setting aside the 'no written statement' order passed on 24.6.2013 and for condoning delay of 1595 days in filing the written statement. In the Notice of Motion it is stated that the suit was initially filed in this Court, but later on transferred to the City Civil Court after the pecuniary jurisdiction was enhanced. The advocate concerned engaged by the defendant No.1 did not inform him about further dates. It is for this reason that 'no

written statement' order came to be passed of which the defendant No.1 was not aware of. Further in the application reasons have been stated that the defendant No.1 is suffering from bipolar disorder.

3. Learned counsel for the respondent - original plaintiff opposed the petition. He would submit that the suit premises are in possession of the defendant No.1 and from that defendant No.1 is earning substantial income. He further submits that the plaintiff has already filed his affidavit of evidence almost after five years ago. According to him, there is no explanation much less satisfactory explanation in the application for condoning the delay. He would submit that defendant No.1 had been very casual and the Trial Court was justified in rejecting the notice of motion for the reasons recorded.

4. I have gone through the order passed by the Trial Court. I have heard learned counsel. No doubt there is delay of 1595 days in filing the Notice of Motion for condoning the delay and taking the written statement on record. The suit is filed by

the plaintiff seeking right, title, interest in the shop premises which are in possession of defendant No.1. In the Notice of Motion it is stated that upon transfer of the suit from this Court to the City Civil Court, no information thereof was given by Advocate to the defendant No.1. Further defendant No.1 is suffering from Bipolar disorder. As defendant No.1 is in possession of the suit shop, in the interest of justice, the defendant No.1 should not be deprived of an opportunity to defend the suit. An opportunity needs to be given to the defendant No.1 to file the written statement subject to however imposing exemplary cost on the defendant No.1 of Rs.75,000/- to be paid to the plaintiff within a period of two weeks from today. It is made clear that defendant No.1 will co-operate with the trial Court in the expeditious disposal of the suit. He shall not seek unnecessary adjournments.

5. The petition is allowed. The Notice of Motion No.3882 of 2017 is allowed. The delay is condoned. The written statement to be filed within a period of two weeks from the date of uploading the order.

6. Considering that the suit is of the year 2009 and that the plaintiff is a senior citizen and as I am informed that the matter is already transferred to the Court hearing senior citizens suits, the Trial Court is requested to hear and decide the suit expeditiously and preferably within a period of one year from today.

(M. S. KARNIK, J.)