

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

WRIT PETITION NO.4642 OF 2019

Sushila Gopal Tejale ... Petitioner
Vs.
Babanbai Sakharam Chandramore and Ors. ... Respondents

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B.K. Barve a/w Sandeep Barve, Archana Lad, Laxmi Ingale I/b.
B.K. Barve and Company for the Petitioner.
Mr. Vishal Tambat for respondent Nos.6A to 6E, 7, 9 to 11, 12A to
12C, 14 and 15.

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CORAM : M. S. KARNIK, J.

DATE : 26th SEPTEMBER, 2019.

P. C.:

1. Not on board. Taken on board.
2. Heard learned counsel for the petitioner.
3. The petitioner is the original plaintiff. The challenge in this petition is to an order passed by the Trial Court setting aside 'no written statement' order and permitting the respondents to file the written statement. The application for filing the written statement is made after delay of eight years. The Trial Court condoned the delay by imposing cost of Rs. 5,000/- on the defendant and permitted written statement to be taken on record.

4. Learned counsel for the petitioner would submit that there is a gross delay in filing the written statement on record which should not have been condoned. In his submission no explanation whatsoever is given in the application for condonation of delay. He would further submit that as many as 5 witnesses on behalf of the plaintiffs are examined. According to him, the defendants slept over their rights and it is almost after five witnesses are examined when the application made for setting aside the no written statement order. Learned counsel would rely on the following decisions :-

(1) Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai reported in **2012(3) ALL MR 450 (S.C.)**.

(2) Mr. Domingos Lima & L.Rs. Vs. Shri Walter Joseph Albano F.G. Lobo & L.Rs. reported in **2017(5) ALL MR 668**.

(3) Vasant Vithal Gawand Vs. Shantaram Tukaram Gawand since (D) by his L.Rs. & Anr. reported in **2016(2) ALL MR 235**.

(4) Noushad Valappad Vs. Sunayna Tarakad @ Sunayna Noushad Valappad reported in **2011(1) ALL MR 311**.

(5) **Dr. Sujinath S/o. Sudhanshukumar Banerjee Vs. Smt. Opadma wd/o. Motilal Kotecha & Ors.** reported in **2015 (6) ALL MR 170.**

(6) Judgment in Civil Appeal Nos.8183-8184 of 2013 (Arising out of S.L.P. (C) Nos.24868-24869 of 2011).

(7) Civil Appeal Nos.4266-4267 of 2018 of Atcom Technologies Ltd. Versus Y.A. Chunawala and Company & Ors.

5. The suit is filed for specific performance of agreement dated 24.3.2000 and 5.5.2000.

6. I have gone through the order passed by the Trial Court condoning the delay. No doubt the application is belated. In the application for condonation of delay it is stated that the defendants are not residing within jurisdiction of the district where the suit is filed. The reason and the explanation of the defendants is far from satisfactory. However, the Trial Court has condoned the delay by imposing cost of Rs.5,000/- on the defendants in the interest of justice. Alternatively it is the contention of learned counsel for the petitioner that having regard

to the length of the delay the cost imposed is very less.

7. Learned counsel for the respondents on the other hand would submit that he has already deposited cost of Rs.70,000/- in terms of the order passed by the Trial Court. Considering the length of delay and the casual manner in which the defendants have approached this litigation, though I am not inclined to interfere with the trial Court's order, it would be necessary to enhance the cost which has been imposed by the Trial Court. Accordingly the order passed by the Trial Court is modified. The defendants are directed to pay exemplary cost of Rs. 50,000/- to the plaintiff over and above the cost of Rs 70,000/- which is already deposited. The cost to be paid within a period of four weeks from today. The impugned order otherwise in my opinion does not warrant any interference as I do not find it just to interfere with the discretion exercised by the Trial Court in allowing the written statement to be taken on record so as to deprive the defendants a right to defend the suit.

8. Considering that the suit is of the year 2010, it is made clear that the defendants will co-operate with the Trial Court in expeditious disposal of the suit. It is further made clear that the defendants will not seek unnecessary adjournments. The Trial Court is further requested to hear and decide the suit expeditiously and preferably within a period of nine months from today.

9. The petition is disposed of.

(M. S. KARNIK, J.)