

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

WRIT PETITION NO.10595 OF 2019

Atmaram Balkrishna Zanje ... Petitioner
Vs.
Umesh Vijay Mhatre and Ors. ... Respondents

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Mr. Dushyant S. Pagare for the Petitioner.
Mr. Vishal A. Patil for respondent No.1.

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CORAM : M. S. KARNIK, J.

DATE : 1st OCTOBER, 2019.

P. C.:

1. Not on board. Taken on board.
2. Heard learned counsel for the parties.
3. The suit is for declaration and injunction. The order impugned is passed below Exhibit 23. There is delay of 183 days in filing the written statement. It is the case of the petitioner-defendant No.1 that he appeared in the suit proceedings suo motu. As a result of some difficulties he was not able to contact his advocate and this resulted in delay in filing the written statement.

4. The Trial Court was of the opinion that no satisfactory reasons are brought on record for exercising the discretion for condoning the delay. The application came to be rejected.

5. Learned counsel for the respondent No.1 opposed this petition. He supported the order passed by the Trial Court. According to him, the defendant No.1 has not given any explanation much less satisfactory explanation explaining the delay. Learned counsel would therefore submit that the discretion exercised by the Trial Court cannot said to be illegal and erroneous.

6. Heard. In my opinion, the delay in filing the written statement deserves to be condoned. The suit is for declaration and injunction. The defendant appeared in the suit suo motu. Some explanation can be found on record that he could not immediately contact his advocate due to some family difficulties which resulted in delay in filing the written statement. Having regard to the length of delay which is of 183 days and the explanation of the defendant No.1, in my opinion, the plaintiff can

be adequately compensated with cost for the inconvenience caused to him. The defendant No.1 should not be deprived of an opportunity to defend the suit only for want of written statement.

7. Subject to payment of cost of Rs.5,000/- by the petitioner to the plaintiff-respondent No.1 on or before 17.10.2019 the petition is allowed. Application Exhibit 23 is allowed. The delay in filing the written statement is condoned. The written statement be taken on record. The impugned order is set aside.

(M. S. KARNIK, J.)