

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8260 OF 2018

Prescilla Francis D'Souza

...Petitioner

vs.

Marshal Thomas Rodrigues and Ors.

...Respondents

Mr. D.S. Patil, for the Petitioner

Mr. S.R. Bhalekar, for Respondent Nos. 1 to 5.

CORAM : M. S. SONAK, J.

DATE : MARCH 27, 2019

P.C.:

. Heard Mr. Patil learned counsel for the Petitioner and Mr. Bhalekar, learned counsel for the Respondent.

2. The challenge in this Petition is to the order dated 27th June, 2018 by which the trial Judge has declined to condone the delay of **four years** and eight months in filing the written statement.

3. Mr. Patil submits that in this case, the Petitioner was genuinely un-well and therefore unable to file written statement within the prescribed period. He admits that though the application seeking condonation of delay and leave to file written statement is not happily worded, the medical certificates annexed

to the Petition may be taken into consideration. He submits that the trial in the suit is yet to commence and therefore the liberal view be taken in the matter.

4. Mr. Bhalekar, the learned counsel for Respondent Nos. 1 to 5 defends the impugned order on the basis of reasoning reflected therein.

5. If the application seeking condonation of delay and leave to file written statement is perused, then it is apparent that there is virtually no cause shown to explain the inordinate delay of almost five years in filing the written statement. To say that the application is not happily worded is only the euphemism. All that is stated is that the Petitioner suffers from backache and that some files were lost. On the basis of such cause, delay of almost five years could not have been condoned and has rightly not been condoned by the learned trial Judge.

6. This is not a case where the Petitioner is very old person. In any case, there is no statement made that there was no other persons in the family to assist the Petitioner. In the Writ Petition

for the first time, the entirely new case is sought to be put up. Even the medical certificates now produced do not suggest that the Petitioner or her family members were not in a position to file written statement in a suit for a period of almost five years. The statement in the Writ Petition with regard to handing over the files to some advocate and thereafter loss of such files, finds no mean whatsoever in the application seeking condonation of delay. The Petitioner cannot seek to improve her case from time to time in order to explain this inordinate delay of almost five years

7. Accordingly, there is no error in the impugned order. This Petition is liable to be dismissed and is hereby dismissed.

8. There shall be no order as to cost.

(M. S. SONAK, J.)

*This order is corrected as per speaking to minutes
order dated 1st April, 2019.*