

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

WRIT PETITION NO. 11737 OF 2016

Harishchandra Ramkrishna Mhatre & Ors. ...Petitioners

Versus

Shri Mohan Shivram Mhatre & Ors. ...Respondents

Mr. Shriram S. Kulkarni for Petitioners.

Mr. Bhushan Walimbe for Respondent Nos.1 to 4.

CORAM : N. J. JAMADAR J.

DATE : OCTOBER 10, 2019

P.C. :

1. Heard the learned Counsel for the parties.
2. This petition assails the order dated 10th June, 2016 passed by the learned Joint Civil Judge, Senior Division, Panvel on an application (Exh.61) in S.C.C. No.100/2007 whereby, the learned Joint Civil Judge permitted the petitioners/defendant Nos.1 to 3 to file written statement by condoning the delay of 97 months and 28 days subject to costs of Rs.90,000/- to be paid to the plaintiffs and Rs.7,000/- to be deposited with the Bar Association, Panvel, to the extent of quantum of costs.
3. The learned Judge has assigned reasons for imposing costs. The measure of Rs.1,000/- p.m. for the delay 97 months seems to have been

adopted. Though the reasons cannot be said to be totally unjustifiable, having regard to the fact that the suit has been instituted for partition and the plaintiffs/respondents and defendants/petitioners are stated to be the co-sharers, it would be in the interest of justice to suitably modify the quantum of costs to be paid to the plaintiffs/respondents.

4. In view of the above, the petition stands allowed to the extent of modification of the amount of costs to be paid to the plaintiffs by the defendants/petitioners. Instead of the amount of Rs.90,000/-, the petitioners/defendant Nos.1 to 3 shall pay an amount of Rs.40,000/- to the plaintiffs/respondents.

5. The petitioners/defendant Nos.1 to 3 shall deposit before the trial court the amount of costs Rs.40,000/- payable to the plaintiffs, and pay the costs of Rs.7,000/- to the Bar Association, Panvel and tender a copy of the receipt before the learned Civil Judge, within a period of three weeks from today.

The plaintiffs shall be at liberty to withdraw the said amount of costs.

6. At this stage, the learned Counsels makes a joint statement that they are not averse to the expeditious hearing of the suit, as the suit has been

instituted in the year 2007.

In view of the above, the learned Civil Judge shall make an endeavour to hear and decide the suit as expeditiously as possible and preferably within a period of one year from the communication of this order.

(N. J. JAMADAR, J.)