

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

WRIT PETITION NO. 9850 OF 2019

Lalita Babaso Pujari

... Petitioner.
(Org. Defendant No.10)

V/s.

Krishna Sidhu Pujari (Ardale)
& Others.

... Respondents.

Mr. Nikhil N. Pawar, Advocate for the Petitioner.
Mr. Abhijeet Adgule, Advocate for the Respondents.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 23, 2019.

PC :

1 Not on Board. Taken on Board.

2 Heard learned counsel for the parties. By this petition, the Petitioner, who is original defendant no.10 in the suit, challenges the order dated 05th July, 2019 passed by the 3rd Joint Civil Judge, Junior Division, Ichalkaranji, below Exh. 119 in RC Suit No. 321 of 2010, refusing to accept the prayer made by the defendant no. 10 for permission to file written statement. Summons was served on the original defendant no. 10 as far as back in 2013. The suit was directed to be proceeded ex-parte for want of written statement. Thereafter, the

defendant no. 10 prayed for permission to file written statement for the cause shown in the application. The trial court did not accept the explanation of the petitioner/ defendant no. 10 for the delay in filing the written statement. It was brought to the notice of the court by the Plaintiff that in the year 2015, the defendant no.10 contested the elections and also won the election. The trial court was of the opinion that this has not been disclosed in the application and that the defendant no. 10 has not come up with clean hands.

3 The learned counsel for the petitioner submits that the suit should not be decreed ex-parte merely on the ground of delay in filing the written statement. He submits that the Petitioner/defendant no. 10 was not keeping well and had undergone two surgeries. One medical certificate is brought on record which disclosed that the Petitioner/ Defendant No.10 underwent abdominal hysterectomy with ovary removal on 12th February 2016 and that she was unfit for 3 to 4 months.

4 It is observed by the trial court that though the petitioner was unable to attend the court for the period between 12.02.2016 to 12.06.2016 but she was fit till the year 2015. Even the averments that she contested the election in 2015 and won is not denied.

5 I am not inclined to interfere with the impugned order as I am informed that the evidence has been recorded by the trial court and final arguments are also heard by the trial court on behalf of the Plaintiff as well as other defendants. The suit is of the year 2010 and the matter is posted by the trial court for judgment. Considering the stage of the suit and that there is inordinate delay in filing the written statement, at this stage, I am not inclined to interfere with the impugned order. However, liberty is granted to the Defendant No.10 to challenge the impugned order in an appeal in case of an adverse decree to defendant no. 10 is made.

6 With these observations, the writ petition is dismissed.

(M. S. KARNIK, J.)

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