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

WRIT PETITION NO. 13708 OF 2018

Nanikram Laxmandas Rohra

..Petitioner

vs.

Shyamlal Laxman Rohra & ors.

..Respondents

Mr. Aaditya Thakkar a/w. Ms. Sneha V. Agrawal i/b. L.V. Jain for
petitioner.

Shri P.D. Dalvi for respondent No.1.

CORAM : M.S.KARNIK, J.

DATE : 17th SEPTEMBER, 2019

P.C. :

Not on Board. Taken on Board.

2. The petitioner is the original defendant No.6. The petitioner is challenging the order dated 23rd July 2018 passed by Civil Judge Junior Division, Ulhasnagar, below Exhibit 38 refusing to condone the delay of 990 days in filing the written statement.

3. Learned counsel for the petitioner submitted that the suit is filed for declaration. It is plaintiffs contention that the suit property is joint family property. It is the case of defendant No.6 that the property is exclusive property of defendant No.6.

4. Learned counsel for the petitioner submits that though the suit is of the year 2006, the suit summons were served on defendant No.6 only on 17/1/2015. In the application for condonation of delay in filing the written statement it is stated that though defendant No.6 had engaged an Advocate, it was later revealed that no effective steps were taken by the Advocate to file Vakalatnama and this resulted in delay.

5. Learned counsel for petitioner would submit that the opportunity to defend the suit, more so when he claims to be in possession of the suit property as his exclusive property, should not be deprived merely because there is a delay of 990 days in filing the written statement.

6. Learned counsel for original plaintiff No.1- present respondent No.1 vehemently opposed the Petition. He would submit that there are several litigations pending between the parties and the same Advocate is representing defendant No.6. Defendant No.6 is well aware of the procedures. He invited my attention to the application made by defendant No.6 for condonation of delay to submit that there is hardly any satisfactory explanation found. He would submit that the trial Court has properly exercised the discretion in refusing to condone

the delay which discretion should not be interfered with in exercise of the writ jurisdiction of this Court under Article 227 of the Constitution of India.

7. Learned counsel for the plaintiff No.2 – present respondent No.2 has filed an affidavit. He submits that plaintiff No.2 has no objection if the delay is condoned and the written statement of defendant No.6 is taken on record. I am informed that now plaintiff Nos. 1 and 2 are represented by different set of lawyers.

8. Be that as it may, from the record it reveals that though the suit is of the year 2006, the suit summons came to be served on defendant No. 6 only on 17/1/2015. I am informed that plaintiff No.1 has already led his evidence. Though there is a delay of 990 days in filing the written statement, having regard to the reasons mentioned in the application for condonation of delay, I am of the opinion that defendant No.6 should not be deprived of the right to defend the suit. Defendant No.6 claims to be in possession. Having regard to the length of delay, it necessary to impose exemplary cost on defendant No.6 to compensate the plaintiff No.1.

9. Considering the circumstances on record, defendant No.6 to pay cost of Rs.25,000/- to plaintiff No.1. The cost to be deposited in the trial Court within a period of 2 weeks from today. Plaintiff No.1 is at liberty to withdraw the cost. It is made clear that the payment of the cost is condition precedent to the filing of the written statement.

10. It is further made clear that the written statement is to be filed within a period of 2 weeks from today. If the written statement is not filed within a period of 2 weeks, the impugned order shall stand. Further, learned counsel for the petitioner – defendant No.6 undertakes that defendant No.6 will not take unnecessary adjournments before the trial Court and will co-operate in the expeditious disposal of the suit. The suit is of the year 2006. The trial Court is requested to expedite the suit and decide the same preferably within a period of 1 year from today.

11. The impugned order is set aside.

12. The Petition is allowed in terms of prayer Clause (a).

(M.S.KARNIK, J.)