

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 13941 OF 2018

Agatha Baptista and Ors. ... Petitioners
Vs.
Threasa Mary Rodrigues and Ors. ... Respondents

Mr. C. K. Tripathi, for the Petitioners.
Mr. J. M. D'silava, for the Respondent Nos. 1 to 8.

CORAM : M. S. SONAK, J.

DATE : MARCH 14, 2019

P.C.:

1. Heard Mr. Tripathi, learned counsel for the petitioner and J. M. D'silava, learned counsel for the respondent Nos. 1 to 8 / original plaintiffs.

2. The challenge in this petition is to the order dated 31st August, 2018 by which the learned trial judge has dismissed the petitioner's Notice of Motion No. 808 of 2017 seeking condonation of delay of 1051 days in filing the written statement and recalling the "no written statement" order.

3. Mr. Tripathi, learned counsel for the petitioner submits that this is a suit between the family members. He submits that there were some compromise talks between the parties. He submits

that the plaint was also amended. He submits that some of the defendants in the suit had expired and a considerable period was spent in bringing their legal representatives on record. He submits that taking into account all these factors, the delay for filing the written statement should have been condoned.

4. Mr. J. M. D'silava, learned counsel for respondent Nos. 1 to 8 defended the impugned order on the basis of reasoning setout therein.

5. Having considered Mr. Tripathi's submission and perused the record, I am satisfied that there is no case made out to interfere with the impugned order.

6. The record indicates that there is no explanation for the inordinate delay of 1051 days in filing the written statement. In between, even no cross-examination order was made against the petitioner on 28/4/2016, which the petitioner did not bother to challenge. This notice of motion was taken out at the stage when the evidence of the plaintiffs and other defendants was concluded and the matter was fixed for final arguments. Taking into consideration the fact that there was no cause shown for such an inordinate delay and the fact that the matter was already posted

for final arguments after the completion of the evidence, it cannot be said that learned trial judge has exercised discretion unreasonably or arbitrarily. Looking to the gross negligence as well as the inordinate delay, the learned trial judge was quite right in dismissing the petitioner's notice of motion.

7. Since, there is no jurisdictional error or otherwise any illegality in the making of the impugned order, this petition is required to be dismissed.

8. The writ petition is accordingly dismissed. There shall be no order as to cost.

9. All concerned to act on an authenticated copy of this order.

(M. S. SONAK, J.)