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

WRIT PETITION NO. 13056 OF 2016

Veronica Peter Miranda & ors. ..Petitioners
vs.
Blossom Denzil D'Souza & ors. ..Respondents
....
Mr. Denzil D'Mello for petitioners.
Mr. Ajay Yadav for respondent No.1.

....
CORAM : M.S.KARNIK, J.

DATE : 27th AUGUST, 2019

P.C. :

By this Petition the petitioners are challenging the order dated 21st September, 2016 passed by the trial Court rejecting the Notice of Motion filed by the original defendant Nos.1 (a), (b) and (e) to condone the delay of more than 4 years in filing the written statement.

2. The suit is of the year 2003. The parties are the cousins. The suit is filed for partition and separate possession. In the application the petitioners have stated that the writ of

summons was served on defendant No.1(a) on 9th May, 2011. In the application it is further stated that the delay was due to the assurances given to defendant Nos.1(a), (b) and (e) by the plaintiffs that the suit would be withdrawn by them as they had a grievance only against their brother and not defendant Nos. 1(a), (b) and (e). It is further averred that the said suit came to be transferred from this Court to City Civil Court. After the suit was transferred even a notice came to be issued. It was the plaintiffs who remained absent and the matter was adjourned from time to time. The suit was dismissed for default on 18th January, 2014 which later on came to be restored only on 30th April, 2015. Hence the Notice of Motion for condoning the delay in filing the written statement was filed only on 4/8/2015.

3. Learned counsel for the petitioners would submit that the delay in filing the written statement is not at all intentional but it was for the reasons mentioned in the application. He would further submit that the suit is for partition and separate possession and therefore an opportunity needs to

be given to the petitioner to contest the suit on merits by filing the written statement. It is stated that the petitioners were under impression that the suit would be withdrawn against them. Moreover, even the suit was dismissed in default which was restored almost after 1 year and 3 months.

4. Learned counsel for the respondent No.1 – original plaintiff vehemently opposed the Petition. He would submit that there is gross delay of 4 years in filing the Notice of Motion for condoning the delay in filing the written statement. He would submit that the suit is of the year 2003. He would further submit that the petitioners cannot take advantage of the dismissal of the suit for the period from 2014 to 2015 as they still have to explain delay prior to the dismissal of the suit. According to him, the explanation is not at all reasonable. He therefore prayed that the Petition be dismissed.

5. Heard learned counsel for the parties.

6. I have gone through the application filed. The petitioners have stated that it was on account of the assurances given to respondent No.1(a) to 1(f) that the suit would be withdrawn by the plaintiffs therefore they did not file written statement within time. Furthermore the petitioner would submit that the suit came to be transferred from the High Court to the City Civil Court. Though notice of the transfer of suit was issued to the parties and their Advocates, the suit was dismissed for default on 18/1/2014. They therefore did not take any steps to file written statement. It is after the suit was restored on 30/4/2015 that the present Notice of Motion was filed on 4/8/2015 for condoning the delay of 4 years in filing the written statement. In my opinion, considering the reasons given and the fact that the suit is for partition, the petitioners should not be deprived of an opportunity to contest the suit only on account of delay in filing the written statement. The recording of the evidence is yet to commence. The petitioners can be allowed to file written statement by imposing exemplary cost. The petitioners therefore to pay cost of Rs.20,000/- to the plaintiff –

respondent No.1 within a period of 2 weeks from today.

7. Considering that the suit is of the year 2003, the trial Court is requested to expedite the suit and decide the same preferably within a period of 1 year from today.

8. Learned counsel for the parties on instructions undertake not to seek unnecessary adjournments and will co-operate with the trial Court for an early decision of the suit.

9. The impugned order is set aside.

10. Notice of Motion No. 2988 of 2015 is allowed. The written statement to be taken on record subject to payment of cost of Rs.20,000/- (Rupees Twenty Thousand only) by petitioners to respondent No.1.

11. Subject to what is observed, the Petition is allowed.

(M.S.KARNIK, J.)