

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

WRIT PETITION NO.3715 OF 2018

Smita Sudhakar Kotre ... Petitioner
Vs.

Dilip Ganpat Katare and Ors. ... Respondents

.....
Ms. Preeti Walimbe I/b. Mr. Bhushan Walimbe a/w Mr. Tejas
Pawar for the petitioner.

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CORAM : M. S. KARNIK, J.

DATE : 23rd SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The petitioner is the original plaintiff. The petitioner is challenging the order passed below Exhibit 114 setting aside no written statement order as against defendant No.7.
3. Despite service of suit summons defendant No.7 did not appear and therefore the ex-parte order came to be passed on 22.7.2013. Almost after four years the application was made by the defendant No.7 for setting aside the ex-parte order and permission to file the written statement. It is the contention of learned counsel for the petitioner that in the application there are

no satisfactory reasons mentioned for setting aside the no written statement order. Learned counsel would submit that there is virtually no application of mind on part of the Trial Court while allowing the application.

4. Heard learned counsel for the petitioner. The suit is filed for partition and separate possession. No doubt the application for setting aside the ex-parte order on account of not filing written statement against defendant is made almost after four years and also after the evidence of the plaintiff is recorded. This being a suit for partition, the Trial Court granted an opportunity to defendant No.7 to file the written statement and contest the suit. The Trial Court has imposed cost of Rs.2,000/-. The Trial Court was also conscious of the fact that the application does not contain any satisfactory reasons. In the interest of justice, if the Trial Court allowed the application by imposing cost of Rs.2,000/-, I do not think this to be a fit case to interfere with the discretion exercised by the Trial Court.

5. It is however made clear that defendant No.7 will not seek unnecessary adjournments and will co-operate with the Trial

Court in the expeditious disposal of the suit. Considering that the suit is of the year 2012, the Trial Court is requested to expedite the suit.

6. With these observations, the petition is rejected with no order as to costs.

(M. S. KARNIK, J.)