

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

WRIT PETITION NO.4765 OF 2019

Bharat Undir Kadu

...Petitioner

Vs.

**M/s. Mandar Developers through
Mr. Mukund Balu Keni & Ors.**

...Respondents

Mr. Jayeshi Joshi I/b Mr. Rohit Joshi, for the Petitioner

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

P.C.:

1. Heard Mr. Jayesh Joshi for the petitioner.
2. Challenge in this petition is to the order dated 24/9/2018 by which the Ld. Trial Judge has dismissed the petitioners' application seeking condonation of delay of 8 years, 7 months, 21 days in filing written statement and granting the petitioner leave to file written statement.
3. Mr. Joshi, Ld. Counsel for the petitioner, submits that the petitioner was under bonafide impression that the Advocate which he had engaged had already filed his written statement. It is only when the petitioners' third Advocate appeared in the matter on 5/1/2017

Mamta Kale

then it was realised that there was no written statement filed on behalf of the petitioner as defendant No.1. He submits that for the fault of petitioner's Advocate, the petitioner cannot be made to suffer. He submits that this is a fit case for granting for delay condonation and leave be granted for filing written statement, subject, no doubt, to payment of costs.

4. The records in the present case demonstrate that the defendant No.1 was duly served with the summons for settlement of issue. His first Advocate appeared in the matter on 5/3/2008. It was followed by appearance of his second Advocate on 2/4/2008. However, no written statement was filed and an order precluding the petitioner from filing written statement was made on 5/12/2008. Despite that, no steps were taken for period of almost 8 years and 7 months to seek setting aside the order dated 5/12/2008.

5. After the inordinate delay, the blame is put on Advocate. In the meanwhile, when the issues were framed on 17/1/2014 and 5/12/2016, the plaintiff, has concluded his evidence, there is absolutely no explanation for the inordinate delay of 8 years, 7 months and 21 days. By quashing the portion the blame on the Advocate, such inordinate delay cannot be condoned and the entire progress in the suit

set at naught.

6. The Ld. Trial Judge has correctly appreciated the factual as well as legal position and there is no jurisdictional error in the view taken by Ld. Trial Judge.

7. Therefore, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)