

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

**WRIT PETITION NO.13770 OF 2017
WITH
CIVIL APPLICATION NO.2432 OF 2018**

Sunder Nenumal Kriplani ... Petitioner
Vs.
Veenu Rochiram Hiranandani & Anr. ... Respondents
.....
Mr. Charanjeet Chanderpal for the Petitioner.
Mr. Ajit Kenjale I/b. Sohil Gulabani for Respondent No.2.
.....

CORAM : M. S. KARNIK, J.

DATE : 26th AUGUST, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The petitioner by this Petition has challenged the order passed by the Trial Court condoning the delay in filing written statement subject to payment of cost of Rs.10,000/-. The petitioner is the original plaintiff. It is the submission of learned counsel for the petitioner that the respondent No.2 herein has without any justifiable reasons applied for condonation of delay in filing written statement. He would further point out that respondent No.2 at no stage participated in the suit proceedings

though they (Society) are well aware of these proceedings. It is further pointed out by the learned counsel that the evidence of the plaintiff was recorded and even all the documents filed on record. According to him, if the respondent No.2 is permitted to file written statement at this stage, it would be prejudicial to the interest of the plaintiff as he is 75 years of age.

3. Learned counsel would submit that no satisfactory reasons have been recorded by the Trial Court in condoning the delay. He would further submit that during the course of the proceedings, the Secretary of respondent No.2 was arrested and he also was made to pay cost of Rs.5,000/-. Learned counsel for the petitioner therefore would submit that considering the conduct of the respondent No.2, the order passed by the Trial Court deserves to be set aside.

4. Per Contra, learned counsel for the respondent No.2 supported the order passed by the Trial Court. He would submit that he was not aware that the proceeding was transferred to some other Court and further that the advocate engaged by them did not inform respondent No.2 about the progress of the matter.

5. Heard learned counsel for the parties. I have gone through the order passed by the Trial Court. No doubt the evidence of the plaintiff was recorded and even the documents were filed, however for the reasons mentioned in the application, the Trial Court condoned the delay in filing written statement subject to payment of cost of Rs.10,000/-. The reason given that the advocate engaged by respondent No.2 did not inform respondent No.2 about the progress of the matter and that the respondent No.2 was not aware of the transfer of the proceedings to some other Court was accepted by the Trial Court.

6. I see no reason to interfere with this discretion exercised by the Trial Court. However, having regard to the facts of the present case and the explanation offered by respondent No.2, in my opinion, the cost imposed by the Trial Court should be enhanced.

7. The respondent No.2 to pay enhanced cost of Rs.20,000/-. Learned counsel for respondent No.2 states that the cost of Rs.10,000/- as per the Trial Court's order has already been deposited. The balance cost of Rs.10,000/- to be paid within two weeks from today.

8. Further considering the plaintiff is 75 years of age, the trial of the suit deserves to be expedited. Learned counsel for the respondent No.2, on instructions, undertakes that he would not seek any adjournments and will co-operate with the Trial Court in expeditious disposal of the suit. Considering the age of the petitioner, the Trial Court is requested to decide the suit as expeditiously as possible and in any event within a period of one year from today.

9. Subject to what is observed above, the Writ Petition is disposed of.

10. Needless to mention that if respondent No.2 fails to appear and participate in the proceedings without a reasonable cause, the Trial Court would obviously proceed with the suit on its own merits.

11. In view of the disposal of the Writ Petition, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

(M. S. KARNIK, J.)