

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 4403 OF 2019

Hariba R. Jagdale

.. Petitioner

vs.

Mahadev B. Jagdale and ors.

.. Respondents

Mr. R.P. Hake Patil I/b Mr. P.P. Raul for the Petitioner.

Ms Snehal S. Jadhav I/b Mr. R.P. Kadam for Respondent  
Nos.1 and 2.

**CORAM : M. S. SONAK, J.**

**DATE : 8 APRIL 2019.**

**P.C. :-**

1] Heard Mr. Hake Patil h/f. Mr. Prashant Raul for the  
petitioner.

2] The challenge in this petition is to the following two  
orders :

(a) Order dated 5<sup>th</sup> July 2014 by which learned Trial  
Judge appointed TILR Dahiwadi as the Court  
Commissioner to measure the suit property and if  
necessary to correctly fix boundary marks;

(b) Order dated 28<sup>th</sup> September 2018 by which  
learned Trial Judge has rejected the petitioner's  
application at Exhibit 23 seeking condonation of delay  
and leave to file a written statement in the suit.

3] Mr. Hake Patil, learned counsel for the petitioner, submits that the order appointing Court Commissioner is illegal and without jurisdiction. He submits that this was not a case of any boundary dispute or encroachment. In the absence of any pleadings to this effect, learned Trial Judge is not justified in appointing Court Commissioner and making impugned order dated 5<sup>th</sup> July 2014.

4] Mr. Hake Patil further submits that the petitioner in the present case was under *bona fide* impression that the suit is likely to be compromised between the parties. He submits that some people migrated as a result of which even the measurement could not be completed and no compromise terms could be filed. He submits that all this lead to delay in filing the written statement. He submits that all this constitute a sufficient cause and therefore, one opportunity should have been granted to the petitioner to file a written statement in the suit

5] Insofar as the impugned order dated 5<sup>th</sup> July 2014 is concerned, there is absolutely no jurisdictional error in

making of the same. That apart, the record indicates that the Court Commissioner visited the site, undertook the measurement and even filed his report. Thereafter, even the petitioner cross-examined the Court Commissioner who was examined as one of the witness in the suit. This petition has been filed in November 2018 when the impugned order was made on 5<sup>th</sup> July 2014. For all these reasons, the challenge insofar as the impugned order dated 5<sup>th</sup> July 2014 is concerned, fails and is hereby rejected.

6] Insofar as the impugned order dated 28<sup>th</sup> September 2018 is concerned, the delay in filing the written statement was about 5 years or thereabouts. Surely, strong cause was required to be shown to explain such inordinate delay. All that is stated in the application is that the petitioner was under impression that the suit was to be compromised, once the measurement were complete.

7] According to me, this cannot be a ground for either not filing a written statement or in order to explain the delay of over 5 years in filing the written statement. The statement

that there were migration has been casually made without furnish of any particulars whatsoever. The inordinate delay of over 5 years cannot be sought to be condoned by making application with casual averments. Accordingly, it cannot be said that there is any jurisdictional error in the impugned order. It also cannot be said that learned Trial Judge, in the facts of the present case, has exercised discretion unreasonably.

8] For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

**(M. S. SONAK, J.)**