

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Writ Petition No. 3922 of 2019
[Nandlal Patiram Janujad Vs. Swapnil Rameshrao Karadbhaje & others]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. H. R. Gadha, Adv., for the petitioner.

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CORAM : Z. A. HAQ, J.

DATE : 07th June, 2019

Heard.

The petitioner [original plaintiff] has challenged the order passed by the trial Court allowing the application [Exh. No. 41] and permitting the defendant no.3 to file Written Statement on record, though there is delay of about nine months. Relying on the judgment delivered in the case of **Aditya Hotels (P) Ltd. Vs. Bombay Swadeshi Stores Ltd., & others** [2007 (14) SCC 431], learned Adv., for the petitioner has submitted that the trial Court has committed an error of jurisdiction by allowing the application [Exh. No. 41] by accepting the explanation given by the defendant no.3 and allowing the application [Exh. No.41]. Contention on behalf of the petitioner [plaintiff] is that the explanation given by the defendant no.3 for not filing Written Statement within the prescribed time, is false and

cannot be accepted.

After considering the explanation given by the defendant no.3 in the application [Exh. No.41], it appears that the explanation should not have been accepted by the trial Court. However, the proviso below Rule 1 of Order-VIII of the Civil Procedure Code, enables the Court to condone delay in filing Written Statement, and, as the learned trial Judge has exercised discretion in a particular manner, in my view, it would not be appropriate for this Court to interfere in the extraordinary jurisdiction.

However, considering the facts of the case, trial Court is directed to dispose the Civil Suit within nine months from today.

Writ Petition is disposed in the above terms. No costs.

Judge