

Anand

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

WRIT PETITION NO. 1559 OF 2019

Anil Nagaji Sawala

.Petitioner

Vs.

Anil Ramachandra More & ors.

.Respondents

Mr. N. N. Wadikar i/b. Mr. N. V. Pawar, Advocate, for the Petitioner
Mr. J. D'Souza i/b. Mr. S. M. Kamble, Advocate, for the Respondent
Nos. 1 to 6

CORAM : REVATI MOHITE DERE, J.

DATE : 25.02.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 28.09.2018 passed by the learned C. J. S. D., Satara below Exh. 179 in Special Civil Suit No. 105 of 2014, by which the learned Judge was pleased to reject the Petitioner's Application seeking permission to file his Written Statement, after four years.

3. Learned counsel for the Petitioner submitted that the Written Statement was affirmed in September, 2017 and thereafter, the Petitioner had gone abroad for some time, as a result of which the Written Statement could not be filed well within time. He submitted that

there was an inadvertent mistake and hence, in the interest of justice, the Petitioner be permitted to file his Written Statement on record, subject to costs.

4. Learned counsel for the Respondent Nos. 1 to 6 opposes the Petition and submits that no interference was warranted in the impugned order.

5. Perused the papers as well as the impugned order. The Respondents had filed a suit for damages as against the Petitioner (Original Defendant No. 3) and other Defendants in May, 2014. It appears that summons were served on all the Defendants including the Petitioner (Original Defendant No. 3) on 02.06.2014. In the said suit, a common Advocate was appointed by all the Defendants including the Petitioner on 03.06.2014. On 10.10.2014, the Defendant No. 4, Attorney and representative of the Defendant Nos. 2 & 3 filed his Written Statement (The Petitioner is the Original Defendant No. 3). On 22.07.2016, the Plaintiff filed his Affidavit of evidence and on 17.12.2017, the Defendant No. 2 filed his Written Statement. On 08.06.2018, the trial Court was pleased to pass an order of “No Cross” as against the Defendant Nos. 2 to 6. On 22.06.2018, the Plaintiff’s witness i. e. PW. 2 filed his Affidavit of evidence as well as the Plaintiff’s witness i. e. PW.3 also filed his Affidavit of evidence. On

20.07.2018, PW.2's examination-in-chief was over and the Defendant No. 1 completed the cross examination of PW.2 and the matter was adjourned for cross-examination by the Defendant Nos. 2 to 6 on the next date. On 17.07.2018, the Petitioner (Original Defendant No. 3) filed an Application and sought permission to file his Written Statement. The said Application was opposed by the Respondents. The trial Court after hearing the parties was pleased to reject the said Application. Hence, this Petition.

6. A perusal of the Application dated 17.08.2018 (Exh. 179) shows that the said Application is bereft of any details with regard to the delay caused in filing the Written Statement. The delay is of four years. The Application does not disclose sufficient cause for condoning the delay. In fact, the Petitioner has not even filed a separate Application seeking condonation of delay in filing the Written Statement. No details have been set out in the said Application except for stating that due to oversight the affirmed Written Statement of September, 2017 could not be filed. One of the reason set out is that he was out of the country, as a result of which the Written Statement could not be filed within time. As noted above, the Application is bereft of any details as to the period during which the Petitioner was out of the country. It is also pertinent to note, that the Petitioner is being represented by the same Advocate, who is appearing for the other Respondents (Defendants). There is nothing

in the Application to show that despite due diligence, the Written Statement could not be filed. The learned Judge after considering all the aforesaid facts has rightly rejected the Petitioner's Application for taking on record the Written Statement. No infirmity can be found in the said impugned order.

7. Accordingly, the Petition is dismissed.

(REVATI MOHITE DERE, J.)