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

WRIT PETITION NO.1154 OF 2020

Bismillah Gulamgaus Chandniwale
(Kokani) alias Kamalabai Bap Fakira Gubade ... Petitioner

Versus
Baby Hussain Sheikh and Ors. ...Respondents

Mr. Gurudas Gorwadkar i/b Mr. N. A. Mogre, for the Petitioner.

Mr. Vishal Tambat, for Respondent Nos.1 to 4.

CORAM : REVATI MOHITE DERE, J.

DATE : 3rd MARCH, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 16th November, 2019, passed by the learned 4th Joint Civil Judge, Senior Division, Nashik, below Exhibit – 40 in Special Civil Suit No.92 of 2019, by which, the learned Judge was pleased to reject the petitioner's application praying for taking her written statement on record.
3. Learned Counsel for the Petitioner submits that the petitioner is a senior citizen who is uneducated, as a result of which she could not file

the written statement within 30 days from the service of summons. He submits that the petitioner was unwell and was also suffering from various medical problems.

4. Learned Counsel for the respondent nos.1 to 4 opposes the petition. He submits that the said ground of medical condition of the petitioner was not raised in the application.

5. Be that as it may, the application seeking to file written statement is essentially on the ground that the petitioner is uneducated, having no knowledge of law. It is not in dispute that the said application was prior to commencement of the trial. The delay in filing the application is about 105 days. The application *prima facie* shows sufficient cause for condoning the delay. It also appears that the trial Court has condoned the delay of other co-defendants by imposing costs of Rs.1,000/-. The learned trial Judge has not considered the reasons given by the petitioner and has observed that no exceptional ground was disclosed by the petitioner preventing her from filing the written statement.

6. As noted above, the reasons spelt out in the application shows sufficient cause for condoning the delay of 105 days.

7. Accordingly, the impugned order dated 16th November, 2019, passed by the learned 4th Joint Civil Judge, Senior Division, Nashik, below Exhibit – 40 in Special Civil Suit No.92 of 2019, is quashed and set aside, subject to petitioner depositing costs of Rs.1,500/- in total, in the trial Court. The trial Court shall thereafter hand over the said amount to the Respondents.

8. The petitioner to file her written statement, within three weeks from today. Thereafter, the suit to proceed in accordance with law. All contentions of all parties are kept open.

9. The Petition is allowed in the aforesaid terms and is accordingly disposed of.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.