

Anand

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

WRIT PETITION NO. 10164 OF 2017

Vijaykumar Shivmurti Shende & ors. .Petitioners

Vs.

Ashalata alias Sulabha Malikarjun Tingre .Respondent

Ms Pooja Khimani i/b. Mr. Kedar J. Patil, Advocate, for the Petitioners
None for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 05.03.2020

P. C.

. Heard learned counsel for the Petitioners.

2. Despite notice, none appears for the Respondent. Learned counsel for the Petitioners submits that the Petitioners be permitted to file their Written Statement in the interest of justice. She submits that the Advocate appearing for the Petitioners had misled the Petitioners and as such, the Petitioners were not aware that the Written Statement was not filed. She further submits that the Petitioners are lay persons with no knowledge of law and as such, they cannot be punished for non-filing of the Written Statement by their Advocate.

3. Perused the papers including the impugned order. The Respondent is the Original Plaintiff, who has filed a suit for partition

and separate possession of shares in the suit properties before the learned C. J. J. D., Dahiwadi, Taluka – Man, District - Satara. The Petitioners are the Original Defendants in the said suit. It appears that the said suit was filed on 14.02.2013. It also appears that on 12.02.2013, the Petitioners' Advocate had appeared before the trial Court, however, failed to file their Written Statement pursuant to which, the trial Court passed an order of "No W. S." as against the Petitioners (Original Defendant No. 1) on 13.11.2013. It also appears that thereafter, the Respondent (Original Plaintiff) filed her Affidavit of evidence on 02.07.2015 and on 28.07.2015, the trial Court passed an order of "No Cross" on the said Affidavit of evidence. Thereafter, the Respondent (Original Plaintiff) filed her pursis closing her evidence on 26.11.2015. It is only after the Respondent closed her evidence, that the Petitioners filed an Application on 12.02.2016 and sought permission to file their Written Statement. It was also prayed that the delay in filing the Application be condoned. The Application (Exh. 53) filed by the Petitioners for setting aside the order of "No W. S." is bereft of any details with respect to why there was such an inordinate delay of almost three years in filing the said Application. What is stated in para 2 of the said Application is that the Petitioners were residing in Mumbai and were ill and as such, were not in a position to attend the Court and give instructions to their Advocate, pursuant to which the order of "No W. S." was passed. Admittedly, this is the only ground taken in the

Application. As noted above, there is a delay of almost three years in filing the said Application (Exh. 53). Admittedly, no separate Application was filed seeking condonation of delay. Be that as it may, a perusal of the Application (Exh. 53) shows that no details have been set out why there was an inordinate delay of almost three years in filing the said Application. Admittedly, the said Application was filed after the evidence of the Respondent (Original Plaintiff) was over. No sufficient cause is disclosed / spelt out for condoning the delay.

4. Considering the aforesaid, no infirmity can be found in the impugned order dated 16.02.2017 passed by the learned C. J. J. D., Dahiwadi, Taluka – Man, District – Satara below Exh. 53 in R. C. S. No. 49 of 2013. Accordingly, the Petition is dismissed. The learned trial Judge to decide the case on its own merits uninfluenced by the order passed in this Petition.

(REVATI MOHITE DERE, J.)