

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10326 OF 2018**

Dipali Dinkar Mhatre & Ors.	...Petitioners
Versus	
Bhalchandra Narayan Save & Ors.	...Respondents

Mr. Satyajeet H. Joshi for the Petitioners

Ms. Harsha S. i/b Mr. Rajan P. Joshi for the Respondent Nos. 1 to 11

Mr. Sandeep V. Mahadik a/w Mr. Momin Rehan for the Respondent Nos. 12 to 14

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 18th FEBRUARY 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioners have impugned the order dated 29th June 2017 passed below Exhibit 1 as well as orders dated 19th April 2018 passed below Exhibits 45 and 47 by the learned Civil Judge, Senior Division, Palghar in Special Civil Suit No. 72/2016.

3 Perused the papers. The petitioners are original defendant Nos. 1, 3, 4, 6, 7, 8, 9 and 11 respectively. The respondent Nos. 1 to 11 are

original plaintiffs and respondent Nos. 12 to 14 are the original defendant Nos. 2, 5 and 10. The respondent Nos. 1 to 11 had filed Special Civil Suit No. 72/2016 in the Court of the learned Civil Judge, Senior Division, Palghar, for declaration, partition and possession and for other reliefs as set out in the plaint. In the said Suit, summons were served on the defendants i.e. the petitioners and respondent Nos. 12 to 14 on different dates. It appears that 'no written statement order' was passed by the trial Court on 29th June 2017 below Exhibit 1. The typed copy of the said order is on page 20 of the petition. It appears that the respondent Nos. 12 to 14 i.e. original defendant Nos. 2, 5 and 10 had filed an application seeking condonation of delay in filing written statement. The delay was of 57 days as far as respondent Nos. 12 and 13 were concerned and 132 days as far as respondent No. 14 was concerned. The trial Court allowed the said application filed by the respondent Nos. 12 to 14 and condoned the said delay of 57 and 132 days and the said respondents were permitted to file their written statements.

4 As far as the present petitioner Nos. 1, 4, 6 and 7 are concerned, there is a delay of 132 days; as far as petitioner No. 3 is concerned, the delay is of 122 days and as far as petitioner No. 8 is concerned, the delay is of 121 days. The applications preferred by these

petitioners seeking condonation of delay were rejected by the trial Court by a four-line order stating therein that the applications do not disclose any extraordinary circumstance due to which the written statement could not be filed within the maximum prescribed period of 90 days.

5 It is pertinent to note that the trial Court had already condoned the delay as far as respondent Nos. 12 to 14 were concerned, which delay approximately was also of same number of days, as the condonation of delay applications filed by the present petitioners. Infact, the trial Court allowed the delay applications preferred by the respondent Nos. 12 to 14, subject to payment of cost of Rs. 6,000/- to the plaintiffs i.e. respondent Nos. 1 to 11.

6 Having regard to the facts in this case, the learned Judge ought to have condoned the delay as far as other respondents were concerned. The petitioners had shown sufficient cause for condoning the said delay of approximately between 57 days to 132 days. It also appears that the written statements are already on record.

7 Considering the aforesaid, the impugned orders dated 29th June 2017 passed below Exhibit 1 as well as the orders dated 18th April 2018

passed below Exhibits 45 and 47 are quashed and set-aside, subject to each petitioner paying cost of Rs. 2,000/- to the plaintiffs i.e. respondent Nos. 1 to 11, within three weeks from today. .

8 The petition is disposed of accordingly.

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

REVATI MOHITE DERE, J.