

nsc.

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

WRIT PETITION NO.11699 OF 2019

Deepak Pandit Dive

...Petitioner

Versus

Pandit Ramchandra Dive

...Respondent

Mr. Khalid Naseem Khan, for the Petitioner.

Mr. B. K. Barve a/w Ms. Archana Lad and Ms. Laxmi Ingale i/b B. K. Barve and Co., for the Respondent.

CORAM : REVATI MOHITE DERE, J.

DATE : 30th JANUARY, 2020

P.C. :

1. Heard learned Counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 27th September, 2019, passed by the learned Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai, in Notice of Motion No.2304 of 2019 in S.C. Suit No.2371 of 2015, by which the petitioner's Notice of Motion for condonation of delay of 3 years and 308 days in filing the written statement and for setting aside the order of 'No Written Statement' dated 6th April, 2017, was rejected.
3. Learned Counsel for the petitioner submits that the petitioner

had shown sufficient cause for condoning the delay of 3 years and 308 days. He submits that the petitioner was pursuing other proceedings, as is evident from the different proceedings preferred by the petitioner. He further submitted that the petitioner's advocates also left the case and the petitioner had no funds, as a result of which, the petitioner was precluded from filing his written statement well in time.

4. Learned Counsel for the Respondent opposed the petition. He submits that no interference was warranted in the impugned order. He submits that the petitioner has failed to show that there was any sufficient cause for filing the written statement belatedly. He submits that the delay of almost 4 years cannot be condoned.

5. Perused the papers including the impugned order. The respondent is the original plaintiff who has filed the suit, being Suit No. 2371 of 2015, as against the petitioner (original defendant) for perpetual injunction and for a direction restraining the petitioner from entering the suit premises. It appears that the trial Court granted interim relief to the respondent (original plaintiff) by which the petitioner (original defendant) was restrained from entering the suit premises. It appears that the order of 'No Written Statement' was passed on 6th April, 2017, as despite appearing

in the said suit, the petitioner failed to file his written statement within time. It is only in July, 2019, that the petitioner filed a Notice of Motion and sought condonation of delay of 3 years and 308 days and for setting aside the order of 'No Written Statement'. The said Notice of Motion was rejected by the trial Court vide order dated 27th September, 2019 on the ground that no sufficient cause was shown for condoning the delay in filing the written statement. A perusal of the affidavit-in-support of Notice of Motion does not spell out the reasons for condoning the huge delay of 3 years and 308 days caused in filing the Notice of Motion seeking condonation of delay in filing the written statement. Thus, no sufficient cause is spelt out in the affidavit-in-support of Notice of Motion, for condoning the delay of 3 years and 308 days i.e. almost four years.

6. Considering the aforesaid, no infirmity can be found in the impugned order.

7. The Petition is dismissed and accordingly disposed of.

8. The suit has already been expedited. The learned Judge to decide the said Suit expeditiously.

REVATI MOHITE DERE, J.