

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

943 WRIT PETITION NO.11602 OF 2021

SHIVRAJ ANNARAO BIRADAR  
VERSUS  
MAULANBEE SULTAN KOTWAL DIED THROUGH LRS WHICH ARE  
ALREADY ON RECORD AND OTHERS

...

Advocate for Petitioner : Rodge Krishna P

CORAM : MANGESH S. PATIL, J.  
DATE : 14.10.2021.

PER COURT :

Heard learned advocate for the petitioner.

2. The petitioner is the defendant No. 21 in a suit pending before the Trial Court since 2008. He is aggrieved and dissatisfied by the rejection of his application (Exh. 192) whereby the learned Judge of the Trial Court refused him permission to file his written statement by setting aside the order that the suit would proceed *ex parte* against him.

3. The learned advocate Mr. Rodge for the petitioner submits that though there was no reason for the petitioner to protract the litigation, because of serious ailment he was required to take medical treatment by commuting between Latur and Pune. He could not pay attention to the litigation. His valuable right to defend the suit would be lost. He has specifically made it clear that he would not lead any evidence even if he is allowed to file the written statement. A pragmatic view ought to have been taken by the Trial Court. He would further place reliance on the case of **Desh Raj Vs. Balkishan**

(D) Through Proposed LR Ms. Rohini in Civil Appeal No. 433/2020 (Arising out of Special Leave Petition (Civil) No. 6217/2019) to buttress his submission that a lenient view is to be taken in such matters. He would further point out that the petitioner has also produced on record the medical record showing history of his ailment.

4. I have carefully considered the submissions and perused the impugned order as also the papers. At the outset it is necessary to note that there is no dispute that the petitioner was served with a summons. At least he has not raised any such dispute in his application (Exh. 192). He was aware about the date of appearance in the suit as 15.09.2015.

5. As can be seen, at no point of time he ever made any attempt to appear in the suit much less to file a written statement. The hearing of the suit was proceeded with. Even the arguments of both the sides were heard and it was reserved for judgment. It is at that stage the petitioner filed this application. It is thus apparent that for a period of almost six years he was indolent and remiss in defending the suit.

6. Besides, as can be seen from the application (Exh. 192) it is as vague as it could be. It is devoid of the particulars and the details which now he is trying to supplement in his Writ Petition. Perhaps, anticipating that the matter would not be looked at seriously, he made a causal attempt by filing a vague application.

7. True it is that the Courts are supposed to be lenient and take a

pragmatic view in such matters. However, it is equally trite that the party who is sleeping over his rights for years together is not entitled to seek any such discretion to be exercised in its favour. This is what precisely seems to have happened in the matter in hand. The learned Judge has specifically mentioned that in spite of service of summons the petitioner had failed to appear and to contest the suit. The application was filed when the matter was reserved for judgment.

8. It is under such circumstances, it cannot be said that he has refused to exercise the discretion in favour of the petitioner unreasonably. I find no merit in the Writ Petition. It is dismissed.

**(MANGESH S. PATIL, J.)**

mkd/-