

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 31 OF 2021

Smt. Seema Amar Sawant
D/o Parshuram Narayan Sawant
Major of age, Age 40 years,
married, Indian National
Presently residing at H. No. 113
Sawant Wada, Opp. Trupti Hotel
Mandrem Pernem, Goa 403527.

..... Petitioner

V e r s u s

Mr. Amar Sawant
S/o Shri Namdev Vishnu Sawant
45 years of age, service,
Domicile of Pernem, Goa
Presently residing at
C/o. Ravindra Vithu Sawant,
H. No. 951, Panval Banda
Sindhudurg, Maharashtra 416511

..... Respondent

Mr. Ganesh Naik, Advocate for the Petitioner.
Ms. Prachi Kabadi, Advocate for the Respondent.

Coram :- M. S. SONAK, J.
Date : 6th July, 2021

ORAL JUDGMENT

1. Heard Mr. Ganesh Naik, the learned Counsel for the Petitioner
and Ms. Prachi Kabadi, learned Counsel for the Respondent.

2. Rule.

3. Rule is made returnable forthwith at the request and consent of the learned Counsel for the parties. Learned Counsel for the Respondent waives service.

4. The challenge in this Petition is to the order dated 14.10.2019 by which the learned Trial Judge has rejected the Petitioner's application seeking condonation of delay in filing the written statement.

5. The Petitioner, in her application, had claimed that the delay in filing the written statement was of only 30 days when, in fact, the record indicates the delay was of about 185 days. Ms. Kabadi, the learned Counsel, is quite right in her submission that the delay was of 185 days.

6. Now, in such matters, the length of the delay is no doubt one of the considerations. However, the main consideration is the quality of the cause shown to explain such delay.

7. If the application made by the Petitioner is perused, then, the cause shown relates to the hardships faced by her, including hardships on account of her indifferent health. The Petitioner has pointed out that she

has no assistance and has to with great difficulty seek assistance from Doctors and Lawyers.

8. Mr. Ganesh Naik also pointed out that the Petitioner used to undertake some tailoring works but, on account of health issues, even this is substantially reduced.

9. According to me, no sufficient emphasis or consideration has been shown by the learned Trial Judge to this cause shown. Instead, the learned Trial Judge has laid undue emphasis on the length of the delay.

10. Besides, there is nothing on record to indicate that this delay was for any malafide reasons or to intentionally delay the proceedings. No doubt, the condonation of delay and taking the written statement on record is bound to cause some prejudice to the Respondent. However, this is a case where the prejudice can be suitably compensated by awarding some costs.

11. Initially, this Court was inclined to award costs of ₹ 25,000/- to the Respondent. Mr. Ganesh Naik, the learned Counsel, further pointed out that the Petitioner will not be in a position to pay such costs.

12. Ms. Kabadi, the learned Counsel, pointed out that in pursuance of proceedings taken out by the Petitioner under the Domestic Violence Act, to the best of her information, a lump sum maintenance of ₹ 2,25,000/- or thereabout has already been paid by the Respondent to the Petitioner.

13. Mr. Ganesh Naik points out that though this may be true that such an amount was paid some time ago. He points out that the Respondent is a bank employee and, therefore, some reduced costs may be imposed.

14. Having regard to the aforesaid position, costs of ₹ 15,000/- are now imposed upon the Petitioner as a pre-condition for condonation of delay and taking on record the written statement,

15. The impugned order dated 14.10.2019 is set aside. The delay in filing the written statement is condoned. The written statement will have to be taken on record by the learned Trial Judge. However, all this is subject to the Petitioner paying costs of ₹ 15,000/- within a period of two weeks from today i.e. on or before 23.07.2021 to the Respondent. If there is any difficulty in paying this amount directly to the Respondent, the Petitioner

can deposit this amount before the Trial Court and the learned Trial Judge can permit the Respondent to withdraw the same unconditionally.

16. If there is no payments/deposit of costs as aforesaid by 23.07.2021, then, this Petition shall be deemed to have been dismissed without any further reference to this Court.

17. The interim order granted by this Court staying further proceedings is hereby vacated.

18. The parties to appear before the Trial Court on 26.07.2021 at 10.00 a.m. and filed an authenticated copy of this order.

19. The Trial Court is now directed to dispose of MP No. 56 of 2018/B as expeditiously as possible and, in any case, within a period of four months from the date, the parties file an authenticated copy of this order. The parties and their Advocate to co-operate in the expeditious disposal of the matter. In particular, the Petitioner herein, should not delay the matter now that this indulgence is being shown to her.

20. The Rule is made absolute in the aforesaid terms.

Andreza

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21. All concerned to act on the basis of an authenticated copy of this order.

M. S. SONAK, J.

ANDREZA PEREIRA  Digitally signed by ANDREZA PEREIRA
Date: 2021.07.06 16:44:26 +05'30'