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**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.220 OF 2021**

**MRS. ASMITA RAJESH HOBLE**

D/o Mr. Ramnath Hoble,

aged 44 years, r/o H. No.89,

Nadkarni, Near Vihar Building,

Goulem Bhat, Chimbhel, Tiswadi, Goa.

... Petitioner.

*Versus*

**MR. RAJESH RAMNATH HOBLE**

s/o Mr. Ramnath Hoble,

aged around 44 years, r/o H.No 64,

Near Ganesh Temple, Bogda,

Mormugao, Goa.

... Respondent.

**Ms. Prithvi Bandekar, Advocate for the Petitioner.**

None for the Respondent.

**Coram: M.S. SONAK, J.**

**Date: 28<sup>th</sup> July 2021.**

**ORAL JUDGMENT:**

1. Heard Ms. Prithvi Bandekar for the Petitioner.
2. On 22.06.2021, notice was issued in this matter and it was made clear that this petition will be disposed of at the stage of admission.
3. The record indicates that the service was completed on 09.07.2021. There is a report of the Bailiff confirming service.
4. On 27.07.2021, when the matter was called out, there was no appearance on behalf of the Respondent. Therefore, the matter was

adjourned to see if the Respondent appears either by himself or through an Advocate. However, even today, the same position continues. Accordingly, this petition is taken up for final disposal, consistent with the order made on 22.06.2021.

5. Rule. The rule is made returnable forthwith.

6. The challenge in this petition is to the order dated 29.07.2019 by which the learned Trial Judge has dismissed the Petitioner's application seeking condonation of delay for filing of the written statement.

7. Ms. Bandekar the learned Counsel for the Petitioner submits that this is a matter where the Petitioner-Defendant was represented by Advocate Sunil Loran before the Trial Court. She submits that settlement talks were going on between the parties and therefore, this Advocate failed to file any written statement within the prescribed period. She submits that at a later stage, this Advocate did apply for condonation of delay with leave to file the written statement. She submits that this application was duly supported by an affidavit of the Petitioner. She submits that there is nothing on record to indicate that any reply was filed by the Respondent controverting the statements made in the application. She submits that even after the impugned order was made, Advocate Loran stopped appearing for the Petitioner. She submits that the Petitioner had to apply for and obtain services of an Advocate under the Legal Aid Scheme. She submits that having regard to all these

circumstances, the delay in filing the written statement was required to be condoned.

8. I have considered the submissions made by Ms. Bandekar and also perused the record. In the application seeking condonation of delay, there was a clear statement backed by an affidavit that settlement talks were on. At least on record, there is nothing to indicate that this statement was controverted by filing any counter-affidavit. Be that as it may, having regard to the overall circumstances of the matter and the position in which the Petitioner is placed, there were no circumstances to doubt the statement made by the Petitioner on affidavit that settlement talks were indeed on. The Advocate for the Petitioner, possibly mistakenly, felt that until such settlement talks fructify or terminate, it might not be in the interest of the settlement talks to file a written statement and to precipitate the matter. The Petitioner has not gained anything by not filing the written statement in time, but rather the Petitioner is now the loser.

9. The Petitioner has placed on record the orders of appointments of Legal Aid Counsel to represent her in the proceedings before the Trial Court. If all such circumstances are considered cumulatively, then, sufficient cause was shown by the Petitioner for failing to file the written statement within the prescribed period. The impugned order does not take into account all such circumstances and the application has been dismissed by observing that the Petitioner has taken the matter casually.

10. In matters of this nature, particularly when the Petitioner was relying on legal aid, the learned Trial Court should have appreciated that the Petitioner had to essentially go by the advice of her Advocate. The Petitioner has made efforts to secure legal aid, after, her Advocate stopped appearing on her behalf. The allegation made by the Petitioner's husband in the suit seeking divorce is that it is the Petitioner who is refusing to stay with her husband. The plaint also refers to settlement talks. The Petitioner, claims to be interested in saving the marriage and therefore contesting the suit for divorce. From the record, it cannot be said that the Petitioner, despite the circumstances in which she is placed has taken matters casually and was therefore not entitled to some indulgence.

11. Having regard to all the circumstances, which are to be considered cumulatively, sufficient cause was made out for condonation of delay in filing the written statement.

12. Accordingly, the impugned order dated 29.07.2019 is set aside. The application for condonation of delay in filing the written statement is allowed. The written statement which is already placed on record is now to be accepted as part of the record.

13. Ms. Bandekar states that now that she has been engaged in the matter, she feels that some additional facts are necessary to be stated in the written statement. If that is so, it is always open to the Petitioner to seek to leave to amend the written statement.

14. The Rule is made absolute in the aforesaid terms. There shall be no order as to costs.
15. All concerned to act based on an authenticated copy of this order.

**M.S. SONAK, J.**