

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

WRIT PETITION NO.644 OF 2021

Govind Pandurang Kor Petitioner

Vs.

Vishwanath Sanjeev Shetty & Ors. Respondents

Mr. Amol Joshi for Petitioner.

Coram : NITIN W. SAMBRE, J.

Date : 18th FEBRUARY, 2021

P.C.:

1. In a suit for specific performance, the Petitioner claimed to have impleaded as a party Defendant in 2013 and he received suit summons on 27th October, 2014. As such, it was expected of the Petitioner to file his written statement within 30 days, in view of amended provisions of Order VIII, Rule 1 of Code of Civil Procedure i.e. by 26th November, 2014, which the Petitioner has failed to do so. As such, suit proceeded without written statement on 26th August, 2015.

2. On 11th March, 2020, the Petitioner moved an application seeking condonation of delay in filing written statement in Regular Suit

No. 58 of 2011 and for setting aside order of no written statement and for permission to place on record his written statement. The said application is rejected by impugned order passed on 20th January, 2021, by the learned Civil Judge, Junior Division, Murbad.

3. The submissions of Mr. Joshi, learned counsel appearing for the Petitioner-Defendant are, the Petitioner is working in Police Department and because of his nature of duties, he is unable to attend day-to-day proceedings in the suit. Mr. Joshi then would urge that there is misrepresentation by Defendant No. 1 on the nature of claim in the suit and as such he was prompted not to contest the suit. Mr. Joshi then would urge that if permitted to file written statement, the Petitioner shall not be seeking any cross-examination of witness, whose evidence is already complete and he is ready to pay nominal costs. If the contention of the Petitioner is appreciated, it is noted that there is delay of five years in filing written statement.

4. The trial in the suit is already commenced and evidence of the Plaintiff is already recorded.

5. There is no convincing explanation as to why there is a delay of about more than five years in filing written statement.

6. In the aforesaid backdrop and having regard to the provisions of Order VIII, Rule 1 C.P.C., in my opinion, no case for interference is made out. Petition fails. Dismissed.

(NITIN W. SAMBRE, J.)