

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

WRIT PETITION (STAMP) NO.4119 OF 2020

Nitika Manoj Kanodia

...Petitioner

Versus

M/s. Ahuja Properties and
Associates and Ors.

...Respondents

**WITH
WRIT PETITION NO.152 OF 2021**

Lalita Ramesh Kanodia

...Petitioner

Versus

M/s. Ahuja Properties and
Associates and Ors.

...Respondents

...

Mr. Kunal Kumbhat for the Petitioner in both the petitions.
Mr. Madhukar Mulay for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 15th MARCH, 2021.

P.C.:-

Petitioners herein have challenged order dated 01/02/2020 whereby the learned Judge has allowed the Respondents /Defendants to file written statement after a period of 30 days.

2. Learned counsel for the Petitioners contends that the Defendants had not filed any application. He therefore contends that learned Judge has erred in allowing the Defendants to file the written

statement beyond the period of 30 days, without recording reasons for permitting filing of written statement beyond the statutory period. It may be noted that Order VIII Rule I of CPC, as applicable to commercial suits reads as under:

“1. Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”

3. A plain reading of this provision would indicate that Defendant is required to file the written statement within 30 days from the date of service of summons. The right to file written statement beyond 30 days does not extinguish ipso facto, but can be extended upto 120 days for reasons to be recorded in writing and on payment of costs as the court deems fit.

4. In the instant case, the Defendants have not filed the written statement within 30 days, nevertheless the Court has allowed filing of the written statement at a later date, which is within the prescribed statutory period of 120 days. It is true that the Judge has neither recorded reasons nor imposed costs while allowing filing of the written statement beyond the period of 30 days. Nevertheless, the Defendants cannot be denied access to justice due to some mistake or inadvertence.

5. Taking into consideration the facts of the case specially the fact that the written statement was filed within 120 days, the impugned order does not warrant interference. Justice will be served by imposing costs of Rs.5,000/- in Writ Petition (stamp) 4119 of 2020 to be paid to the Plaintiff within two weeks from the date of this order. The Petitions are accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)