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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13525 OF 2018**

Gauridarshan Co-operative Housing Society Petitioner.

V/s

Sadanand Raghunath Gauri & Ors. Respondents.

Mr. Ashutosh R. Gole for the Petitioner.

Mr. Sanjay Patil for the Respondents

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 16, 2021

P.C.:-

1] In a suit for partition, Petitioner/Defendant was served on 22/9/2016. On 13/12/2016, it is claimed that he was granted time to file Written Statement and accordingly on 10/1/2017 i.e. on the next date of hearing, he tendered Written Statement before the in-charge court. Subsequently, it was noticed that since the Written Statement was filed beyond the period of 90 days, same should have been accompanied with an application for condonation of delay. The Petitioner/Defendant No.11 has moved an application for condonation of delay which came to be rejected by the impugned order.

2] Submissions are, trial in the matter is yet to commence, as issues

are not framed. Apart from above, according to the Petitioner, Written Statement was verymuch tendered on 10/1/2017. However, same was not accompanied with the application for condonation of delay and subsequent period in between the date of submission of such application for condonation of delay is also considered by the Court as unexplained period. According to learned Counsel for the Petitioner, no prejudice will be caused to the Respondent/Plaintiff and that being so, order impugned is liable to be quashed and set aside.

3] The learned Counsel for the Respondent/Plaintiff would oppose the claim, as according to him, the Petitioner was not diligent in pursuing his right to file Written Statement within the time stipulated as there was delay which is not explained. According to him, period fixed by virtue of provisions of CPC needs to be honoured and that being so, application is rightly rejected.

4] Considered rival submissions.

5] It is not in dispute that other Defendants in the suit were yet to be served on the date on which Petitioner tendered his Written

Statement i.e. on 10/1/2017. Issues in the matter are not yet framed.
As such, trial has not commenced.

6] In the aforesaid backdrop, delay caused cannot be termed as intentional or malafide, particularly when the Written Statement was tendered on 10/1/2017.

7] In that view of the matter, the order impugned passed below Exhibit-40 on 4/4/2018 by Civil Judge, Senior Division, Thane is hereby quashed and set aside. Application-Exhibit-40 stands allowed, subject to payment of costs of Rs 5000/- to be deposited in the Trial Court, which the Petitioner/Plaintiff shall be entitled to withdraw.

8] Petition is disposed of in the aforesaid terms.

(NITIN W. SAMBRE, J.)