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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10719 OF 2019**

Smita Sharad Gaonkar] .. Petitioner
V/s.
The State of Maharashtra & Ors.] .. Respondents

Mr.C.K. Bhangoji, for Petitioner.
Mr.S.D. Rayrikar, AGP for Respondent No.1-State.
Mr.Om Suryawanshi, for Respondent No.3-MCGM.

CORAM : N.R.BORKAR, J.

DATED : 7TH SEPTEMBER 2021.

P.C.:

1] This Petition takes an exception to the order passed by the Additional Chief Judge, Small Causes Court, Mumbai dated 29.07.2019 below Exhibit 12 in Municipal Election Petition No.17/2018.

2] The respondent No.2 herein has filed aforesaid Municipal Election Petition before the Small Causes Court against the present Petitioner and others. The Petitioner could not file written statement within a period stipulated under Order VIII Rule 1 and thus application at Exhibit 12 was filed seeking condonation of delay of 95 days in filing written statement. The learned trial court rejected the said application by the order impugned.

3] This Court on 03.10.2019, while issuing notice to the contesting Respondent passed the following order :

- “ Not on board. Taken on board.
2. Heard learned counsel for petitioner.
3. Learned AGP appears for Respondent No.1. Learned Counsel appears for respondents No.2 & 3.
4. The petitioner to serve the respondents by Advocate's notice along with the copy of this order informing the respondents that the Petition would be heard on 17/11/2019. It is made clear that an endeavor would be made to dispose of the Petition finally on 17/11/2019 considering the narrow controversy involved in this Petition.
5. In the event, the respondents fail to appear despite service of Advocate's notice, the Petition would be heard on its own merits even in the absence of the respondents.
6. The Petitioner to file an affidavit of service before the returnable date.
7. Stand over to 17/11/2019.

4] On 17.01.2020, one week time was granted to contesting Respondent to file affidavit-in-reply, if any. However, till date no reply has been filed. Today, there is no appearance on behalf of the contesting Respondent. I have perused the order impugned. The learned trial Court rejected the application mainly on the ground that the Petitioner has not filed any documents in support of the ground raised in the application about the illness of her husband.

5] The Petitioner before the trial court has stated that she could not file written statement within time as she was required to search advocate to

represent her and due to the illness of her husband. The learned counsel for the Petitioner submits that no reply was filed on behalf of the contesting Respondent to the application for condonation of delay. It is submitted in such circumstances the averments in the application remained uncontroverted. It is submitted that in such situation, the trial court ought not have rejected the application or at least ought to have granted opportunity to file medical papers in relation to illness of the husband of the Petitioner on record. It is submitted that the order of the trial court thus needs to be quashed and set aside.

6] Though the Petitioner has filed the medical papers in relation to illness of her husband before this court, in my view, the Petitioner ought to have filed the said medical papers before the trial court. However, considering the facts and circumstances of the case, I am of the view that it would be appropriate to condone the delay. In the result, the following order is passed.

i] Writ Petition is allowed.

ii] The impugned order dated 29.07.2019 below Exhibit 12 in Municipal Election Petition No.17/2018, is set aside, subject to payment of costs of Rs.5000/- payable to the contesting Respondent No.2.

iii] Application filed by the Petitioner for condonation of

delay is allowed.

iv] The trial court shall take written statement of the Petitioner on it's record.

v] The Petitioner shall deposit the costs in the trial court within a period of three weeks from today.

[N.R.BORKAR,J]