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

CIVIL WRIT PETITION NO. 2532 OF 2018

MR. SHYAM RAMCHANDRA SHIRKE

....PETITIONER

V/s.

KAILASH RAMCHANDRA SHIRKE AND ORS

.....RESPONDENTS

Mr. Tushar Dahibawkar a/w Ms. Rita Dedhia i/b Dahibawkar & Co.
Advocate for the Petitioner

Ms. Vrushali Kabre i/b Sheetal U. Malvankar for Respondent no. 1

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 25, 2022.

P.C.:

1) This Petition is by Defendant to S.C. Suit No. 2383/2011. Defendant no. 3 after having put his appearance in 2011, has failed to place on record written statement. Since the Suit proceeded without W.S., Notice of Motion No. 4625/2016 is taken out seeking condonation of delay of 1927 days in filing the written statement and permission to place on record written statement which is rejected vide impugned order dated 29/11/2017. As such, this Petition.

2) The submissions are, parties to the Suit are in blood relation.

Considering the nature of claim, it is in the interest of justice that the Petitioner should be permitted to place on record his written statement subject to such reasonable conditions as this Court shall order. It is further claimed that delay was unintentional and same was bonafide.

3) Prayer is opposed by counsel for Respondent.

4) Fact remains that Petitioner has entered his appearance after he was served on 29/03/2012. As such, if the scheme under Order VIII Rule 1 of Code of Civil Procedure, 1908 is appreciated, least that was expected of the Petitioner was to file his written statement within 90 days as provided therein.

5) As far as delay of 1927 days is concerned, it is claimed that there was a communication gap inter-se between the Petitioner and his wife who has received Suit summons but failed to inform the Petitioner about the same.

6) Court cannot be ignorant to the fact that Petitioner has already filed his appearance in the aforesaid Suit but has chosen not to file his written within the stipulated period as provided under Order VIII Rule 1 of CPC. In absence of any reasonable explanation or bonafides

on the part of the Petitioner, in my opinion, Court below was justified in refusing to condone the delay of more than 5 years in filing the written statement.

7) That being so, no case for interference is made out. Petition stands rejected.

[NITIN W. SAMBRE, J.]